

4-21-2008

## Bach v. Miller Clerk's Record v. 9 Dckt. 31716

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LAW CLERK

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

7-13

COPY

John N. Bach

Plaintiff / Appellant

Alva Harris, et. al.

Defendants / Respondents

and

John N. Bach

Plaintiff / Respondent

Alva Harris, et. al.

Defendants / Appellants

Katherine Miller, et. al.

Defendants

Appealed from the District Court of the Seventh Judicial  
District of the State of Idaho, in and for Teton County  
Hon Richard T. St. Clair, District Judge

John N. Bach, *Pro Se*, P.O. Box 101, Driggs, Idaho 83422

Alva A. Harris, Esq. P.O. Box 479, Shelley, Idaho 83274

Attorney-for-Defendants/Respondent  
and Defendants/Appellants

Filed this \_\_\_\_\_ day of \_\_\_\_\_

APR 21 2008

20

Clerk

By

Supreme Court Court of Appeals  
Entered at \_\_\_\_\_

Deputy

Volume 9 of 10

**Supreme Court No. 31716/31717**  
**Teton County No. CV 02-208**

John N. Bach  
Plaintiff/Appellant  
vs  
Alva Harris, et. al.  
Defendants/ Respondents

John N. Bach  
Plaintiff/Respondent  
vs  
Alva Harris, et. al.  
Defendants/Appellants

and

Katherine Miller et. al.  
Defendants

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Affidavit of Plaintiff John N. Bach, in Opposition to Defendants' Galen Woelk, individually & dba Runyan & Woelk's Motion for Summary Judgment on Remaining Counts, and to Affidavit of Galen Woelk & Affidavit of Jason Scott; and Request for Judicial Notice of Pending Teton Actions, Filed August 16, 2004	1346
Affidavit of Plaintiff John N. Bach, in Support of Application/Request for Immediate Ex Parte Issuance of Restraining Order, and Order to Show Cause for Preliminary & Permanent Injunction Against All Defendants, Their Agents, Etc., Protecting Plaintiff's Person and Properties, Filed July 23, 2002	0006
Amended Answer and Demand for Jury Trial, Filed January 13, 2005	1433
Amended Default Judgment Against Wayne Dawson, Filed February 23, 2004	1086
Amended Exhibit List, Filed February 1, 2005	1457

Amended Judgment, Filed June 2, 2005	1659
Amended Judgment, Filed May 23, 2005	1656
Answer & Demand for Jury Trial, Filed March 19, 2003	0317
Answer, Counterclaim and Jury Demand for Defendant Katherine Miller, & Miller Third Party Complaint IRCP Rule 14(a) and Miller Cross Claim/ Counterclaim IRCP Rule 13(a), 13(g), 13(h), 17(d), 19(a)(1), Filed March 17, 2003	0265
Answer, Filed January 29, 2003	0193
Answer to First Amended Complaint and Demand for Jury Trial, Filed April 14, 2003	0351
Appearance; Motion to Dismiss and Motion for Sanctions, Filed January 22, 2003	0210
Application & Affidavit of John N. Bach, Plaintiff, for Entry of Default Per IRCP, Rule 55(a)(1), et seq, Against Defendants: (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entitiy; (2) Targhee Powder Emporium, Inc., Untld and Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also, dba Grande Body & Paint, Filed March 19, 2003	0321
Brief, Filed June 27, 2003	0757
Brief in Support of Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1482
Certificate of Exhibits	1707
Certificate of Service	1721
Clerk's Certificate	1719
Complaint for Damages/Injuries to Plaintiff, His Real & Personal Properties; Malicious Prosecution; Abuse of Process; Slander of Title & Conversion- Theft of Properties; Defamation-Libel & Slander; and for Immediate Injunctive/ Equitable relief, Filed July 23, 2002	0001
Default Judgment Against Alva Harris, SCONA, Inc., Bob Fitzgerald, Ole Olesen, and Blake Lyle, Filed February 27, 2004	1101
Default Judgment Against Lynn McLean, as Personal Representative of the Estate of Jack Lee McLean, Filed September 21, 2004	1367
Default Judgment Against Wayne Dawson, Filed January 5, 2004	0988

Defendant Ann-Toy Broughton's Exhibit List, Filed June 4, 2003	0597
Defendant Earl Hamblin's Answer to Plaintiff's First Amended Complaint, Filed June 25, 2003	0721
Defendant Earl Hamblin's Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 23, 2004	1213
Defendant, Earl Hamblin's Exhibit List, Filed January 13, 2004	1009
Defendant Miller's Brief in Opposition to Summary Judgment, Filed May 6, 2003	0421
Disclaimer of Interest, Filed November 17, 2003	0950
Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 8, 2004	1185
Eighteenth Order on Pending Motions, Filed September 9, 2003	0857
Eighth Order on Pending Motions, Filed March 4, 2003	0246
Eleventh Order on Pending Motions, Filed April 2, 2003	0337
Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1479
Entry of Appearance, Filed August 16, 2002	0036
Entry of Default Against Defendants; (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entity; (2) Targhee Powder Emporium, Inc., an Idaho Corporation; & dba Unltd & Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (aka Oly Olson); (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also dba Grande Body & Paint (IRCP, Rule 55(a)(1), et seq.), Filed March 19, 2003	0320
Exhibit List, Filed January 20, 2005	1439
Exhibit List, Filed May 29, 2003	0537
Fifteenth Order on Pending Motions, Filed June 2, 2003	0562
Fifth Order on Pending Motions, Filed January 10, 2003	0165
Final Judgment, Filed February 11, 2005	1505

Final Pre-Trial Order, Filed June 3, 2003	0576
Findings of Fact and Conclusions of Law, Filed July 1, 2003	0762
First Amended Complaint, Filed September 27, 20002	0053
Fourteenth Order on Pending Motions, Filed May 28, 2003	0505
Fourth Order on Pending Motions, Filed December 3, 2002	0154
Further Affidavit in Support of His Current Motions to (1) Strike Entire Answer of Defendants Hill and/or Preclude Any Evidence by Them of Their Claims to Title, Ownership, Possession or Rights of Use of Real Property with Home @ 195 N. Hwy 33, Driggs and/or for Unqualified Admissions That Plaintiff is the Sole & Rightful Owner Thereof, Etc., & (2) Alternatively, in Opposition to Defendants Hills' Motion for Summary Judgment, Filed April 20, 2004	1229
John N. Bach's Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order Denying Motion to Dismiss Appeal of May 23, 2005. Filed June 13, 2005	1662
John N. Bach's Second Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order of August 4, 2005, Not Mailed, Purportedly Until August 5, 2005 and Not Received Until on Thursday, August 11, 2005; and John N. Bach's Second Amended Notice of Appeal in No. 31717, Filed August 18, 2005	1685
Judgment Against Defendants Bret Hill and Deena R. Hill, on Second Count and Fourth Count of First Amended Complaint, Granting Quiet Title Judgment in Favor of Plaintiff John N. Bach, and Permanent Injunction in His Favor Re the Real Properties & Interest Quieted to/in Him as to Said Second & Fourth Counts, Filed June 24, 2004	1325
Judgment, Filed February 17, 2005	1511
Judgment, Filed February 24, 2005	1561
Judgment, Filed October 23, 2003	0908
Katherine Miller's Affidavit in Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0435
Miller's Descriptive Exhibit List, Filed May 27, 2003	0495
Miller's Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0419
Minute Entry, Dated January 9, 2003	0178

Minute Entry, Dated July 14, 2003	0814
Minute Entry, Filed April 15, 2003	0357
Minute Entry, Filed April 19, 2004	1222
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Minute Entry, Filed July 17, 2003	0841
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Minute Entry, Filed June 17, 2003	0609
Minute Entry, Filed June 30, 2004	1330
Minute Entry, Filed March 14, 2005	1612
Minute Entry, Filed March 22, 2004	1204
Minute Entry, Filed May 5, 2003	0415
Minute Entry, Filed May 6, 2005	1625
Minute Entry, Filed May 9, 2004	1306
Minute Entry, Filed May 29, 2003	0532
Minute Entry, Filed November 9, 2004	1400
Minute Entry, Filed October 14, 2003	0862
Minutes Report, Dated August 13, 2002	0020
Minutes Report, Dated June 11, 2003	0629
Minutes Report, Dated June 16, 2003	0679
Minutes Report, Dated November 26, 2002	0141
Minutes Report, Dated October 9, 2002	0126
Minutes Report, Dated September 10, 2004	1362

Motion, Filed November 12, 2002	0137
Motion to Set Aside Default, Filed April 2, 2003	0324
Motion to Strike Plaintiff's First Amended Complaint and for Rule 11(a)(1) Sanctions Against John Bach, Filed October 3, 2002	0087
Nineteenth Order on Pending Motions, Filed October 23, 2003	0868
Ninth Order on Pending Motions, Filed March 7, 2003	0259
Notice of Appeal, Filed February 28, 2005	1564
Notice of Appeal, Filed March 25, 2005	1624A
Notice of Appearance , Filed April 1, 2003	0323
Notice of Appearance, Filed April 4, 2003	0344
Notice of Appearance, Filed August 7, 2002	0016
Notice of Hearing Motion to Set Aside Default and Motion to Reinstate Answer Filed May 29, 2007	540A
Notice of Motions and Motions by Plaintiff John N. Bach Re Post Twenth Fifth Order and Final Judgment, Along with Order, of February 8, 2005 and February 11, 2005 for Orders: (1) Vacating, Setting Aside, Etc. Said Orders and Final Judgment; (2) Entering New and Different Order & Final Judgment in Favor of Plaintiff; (3) Granting of New Trial as to All Plaintiff's Counts Against Katherine Miller and Galen Woelk; (4) For Order Awarding Plaintiff Costs and Paralegal Fees Sought. & Modifying Permanent Injunction. Filed February 25, 2005	1524
Notice of Substitution of Attorney, IRCP 11(b)(1), Filed August 27, 2002	0043
Order Amending Stay Entered April 13, 2004, Filed April 14, 2004	1219
Order and Notice Setting Jury Trial, Filed November 27, 2002	0139
Order and Preliminary Injunction, Filed August 16, 2002	0038
Order, Filed February 7, 2005	1487
Order, Filed June 16, 2003	0606
Order, Filed March 18, 2004	1200
Order, Filed May 22, 2003	0492

Order for Default, Filed June 16, 2003	0603
Order of Voluntary Disqualification Pursuant to IRCP 40(d)(4), Filed July 23, 2002	0012
Order on Pending Motions, Filed September 3, 2002	0045
Order on Various Motions Heard on March 16, 2004, Filed March 22, 2004	1209
Order Restraining All Defendant Their Agents, Attorneys, or Any Persons/Entities From Entering, Accessing or Attempting to Enter, Access or Be on Any of Plaintiff's Properties; and Order to Show Cause to All Defendants Why Such Restraining Order Should Not Be Issued as a Preliminary and Permanent Injunction, Filed July 25, 2002	0014
Order Sealing All Records of in Camera Session on September 9, 2002, Filed October 15, 2002	0133
Order Suspending Appeal, Filed January 22, 2004	1043
Plaintiff's & Appellant's Amended Notice of Appeal, Per Idaho Supreme Court's Order Re: Final Judgment of December 22, 2003. (Related Petition for Writ of Mandate/Prohibition, Idaho Supreme Court Docket No. 30009 Filed September 19, 2000, denied) & Plaintiff, Counterclaim Defendant & Appellant Has Made Two Motions for a Rule 54(b) Certificate, to which Katherine Miller Has Not Objected Except to the form of the Proposed Certificate. Judge St. Clair has delayed issuing said Certificate, most recently, issued a Twentieth Order, see attached copy, continuing all such motion to the 1 <sup>st</sup> week, Feb., 2004, Filed January 12, 2004	0996
Plaintiff & Counterclaim Defendant John N. Bach's Exhibit List and Designations Pending/Subject to Court's Rulings – Orders Re Summary Judgment Motions, Filed May 28, 2003	0501
Plaintiff & Counterclaim Defendant John N. Bach's Memorandum Brief in Support of His Motions Filed Feb. 25, 2005 (IRCP, 12(f), (g), 59(a), 1, 3, 4, 5, 6, & 7; 52(b); 60(b), (1), (2), (3), (4), (5), & (6); 11(a)(1)(2), Filed March 9, 2005	1579
Plaintiff and Counterclaim Defendant John N. Bach's Motion for Directed Verdict on All His Counts in the First Amended Complaint and on All his Affirmative Defenses to Katherine Miller's Counterclaims (IRCP, Rule 50(a) et seq.), Filed June 18, 2003	0613
Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motions and Motions for Summary Judgment and /or Summary Adjudication, IRCP, Rule 56, et seq., Filed April 18, 2003	0413

Plaintiff's & Counterclaim Defendant John N. Bach's Notice of Motions & Motions Re (1) Order Voiding/Invalidating Special Jury Verdict of June 19, 2003; (2) For Judgment in Complete Favor of Plaintiff & Counterclaim Defendant, John N. Bach, against Defendant & Counterclaimant Katherine D. Miller, aka Katherine M. Miller, in all capacities; (3) Amendment of Ruling/Order or Contemplated Judgment Re Special Verdict &/or new Trial: and for Modification of Final Pretrial Order &/or Relief from Final Pretrial Order & Trial Orders, Special Verdict, Etc. (IRCP, Rules 16, 50, 58, 59, & 60(1)-(6).) Filed July 3, 2003	0786
Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motion, Motion & Affidavit for the Disqualification of the Honorable Richard T. St. Clair, Assigned, (IRCP, Rule 40(d)(2)(A)(1)(3) & (4); 40(d)(5), et seq; and Notice of Motion & Motion for Vacating of All Judge St. Clair's Final Pretrial Orders, Adverse Orders, Findings of Facts and Conclusions of Law, Etc., Filed July 9, 2003	0804
Plaintiff & Counterclaim Defendant John N. Bach's Post Judgment Evidentiary Hearing Brief Re: Lack of Jurisdiction, Basis, Reasons and Lack of Any Attorneys' Fees, Reasonable or Otherwise to be Awarded/Allowed Defendants Hills Nor Hamblin Per 12-121. Filed May 6, 2005	1639
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 1. In Support of His Motions Filed November 6, 2003, Filed November 20, 2003	0953
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 2., In Support of His Motions Filed November 6, 2003. Filed December 3, 2003	0963
Plaintiff & Counterclaim Defendant John N. Bach's Trial Brief No. Two (2) Defendant & Counterclaimant Miller's Answer & All Counterclaims are Barred as a Matter of Both Fact and Law-By Miller's Discharge of Claims Against Bach in His Chapter 13 Bankruptcy & Per the Written Undispute Settlement Agreement of October 3, 1997. (Also Cited/Presented for Plaintiff's Motion in Limine to be Filed Herein.) Filed May 30, 2003	0541
Plaintiff & Counterclaimant John N. Bach's Answer & Affirmative Defenses to Counterclaims of Katherine D. Miller, aka Katherine M. Miller, Filed April 4, 2003	0345A
Plaintiff John N. Bach's Affidavit Per IRCP, Rule 56(f) to Stay Any Hearing or Action to Consider Granting Defendants Bret & Deena R. Hill's Motion for Summary Judgment Until Plaintiff has His Further Motions for Discovery Sanctions Against Said Defendants Hill Heard; and Affidavit, Part II, in Opposition, Refutations and Objections to Hills Affidavits Re Their Summary Judgment Motions, Filed March 2, 2004	1144
Plaintiff John N. Bach's Closing Brief in Opjections & Opposition to Defendants Hill's Motion/Application for Attorney Fees (IRCP, Rule 54(e)(2), I.C. 12-121; and Also To: Defendant Hamblin's Motion/Application For Attorneys Fees, (IRCP, Rule 54(e)(2), I.C. 12-121), Filed May 6, 2005	1630



Plaintiff John N. Bach's Closing Brief in Support of His Motion for Summary Judgment Against All Defendants, Filed May 13, 2003	0455
Plaintiff John N. Bach's Exhibit List for Jury Trial of February 8, 2005, Filed January 21, 2005	1445
Plaintiff John N. Bach's Further Affidavit Re Issuance of Proposed Permanent Injunction & Request for Judicial Notice of Orders of Dismissal with Prejudice of all plaintiff (Jack Lee McLean's) Claims in Teton CV 01-33; 01-205; 01-265 & Dismissal of Charges in Teton CR 04-526 With John N. Bach's 4 Motions Filed Dec. 27, 2004 & His Further Memo In Support of His Motions, Filed January 12, 2005	1417
Plaintiff John N. Bach's Further Memorandum Brief Re Objections & Opposition to Defendants Hills' Motion for Summary Judgment, Filed March 11, 2004	1190
Plaintiff John N. Bach's Memorandum Brief No. "1", Re His Objections & Opposition to Defendant Katherine Miller's Motion to Dismiss (Rule 12(b)(8)); and Motion to Strike Said Defendant's Motion and for Evidentiary & Monetary Sanctions. (IRCP, Rule 11(a)(1), Rule 56(g) & Court's Inherent Powers, Etc., Filed January 28, 2003	0182
Plaintiff John N. Bach's Memorandum Brief Re Objections & Opposition to Defendants Dawsons' Motion to Dismiss Per Rule 12(b)(5); & Plaintiff's Motions For Sanctions IRCP, Rule 11(a)(1) & Inherent Power of Court, Filed February 11, 2003	0240
Plaintiff John N. Bach's Memorandum Brief Re Objections, Motion to Strike, & Opposition to Defendant Wayne Dawson's Motion Re (1) Second Renewed Motion to Set Aside Default; (2) Motion to Continue Trial or (3) Bifurcate, Etc., Filed June 3, 2003	0591
Plaintiff John N. Bach's Memorandum of Objections & Opposition to Defendants In Default (The Dawson's) Motion to Set Aside Deffault & to Strike the Affidavit of Jared Harris Offered Purportedly in Support Thereof; and Plaintiff's Motion for Sanctions, Etc. (IRCP, Rule 12(f), 11(a)(1) & 55(c) and 60(d)(6), Filed February 11, 2003	0199
Plaintiff John N. Bach's Memorandum Re Court's Inquiry of Effect of Discharge in Bankruptcy of Debtors Property Not Utilized by Trustee for Creditors, Filed September 3, 2004	1356
Plaintiff John N. Bach's Motion Re (1) Protective Order Staying/Abating All Discovery by Defendants Hills, Until They Have Complied Fully with Plaintiff's No. 1, Discovery Set & Until Plaintiff's Motions Re Hills' Default Entries, Etc., Are Heard; and (2) For Striking, Vactating or Disallowing Any Summary Judgment Motions by Defendants Hill. IRCP, Rules 11, 26, 37 & 56(f)(g), Filed February 11, 2004	1059

Plaintiff John N. Bach's Motion to Strike and Quash Defendant's Dawsons' Motion To Disqualify the Honorable Richard T. St. Clair, IRCP, Rule 40(d)(1); and for Sanctions Against Dawsons & Their Counsel, Jared Harris, IRCP, Rule 11(a)(1) & Inherent Powers of the Court, Filed February 11, 2003	0242
Plaintiff John N. Bach's Motion to Strike Motion for Attorneys Fees and Costs Brought by Defendants, Estate of Stan Nickell, Personal Representative; and Plaintiff's Memorandum Brief in Support of Said Motion and in Opposition to Nickell's Estate Motion for Attorneys Fees & Costs. & Motion for Sanctions. Rule 11(a)(1) a Full Hearing is not Just Requested but Further Required (ID Const. Art. I, Sec 13, IRCP, Rule, Filed February 23, 2005	1514
Plaintiff John N. Bach's Notice of Ex Parte Motion and Motion for Immediate Issuance of Writ of Possession, Assistance and/or Seizure of Plaintiff's Vehicles and Trailors Still in Defendants' Possession, Especially in Possession of Blake Lyle, Filed May 16, 2003	0488
Plaintiff John N. Bach;s Notice of Motions and Motions Re; (1) Hearing on All Plaintiff's Motions Filed Since September 27, 2004; (2) For Order Striking, Quashing or Denying Defendants Woelk, Runyan's Motion to Amend/Modify, Etc., Court's 32 <sup>nd</sup> Order; (2) For Order to Set Pretrial Conference on Remaining & Amending Issues; and (4) For Order Granting Plaintiff Leave to Amend & Add Claims Against Defendants Woelk, Runyan & Their Law Firm. (IRCP Rules 12(f), 15(a), etc.,) Filed October 19, 2004	1396
Plaintiff John N. Bach's Notice of Motion & Motions Re: (1) Order for Amended Judgment of Default Against Defendant Wayne Dawson; (2) Order Entering Different & Additional Damages & Relief Against Wayne Dawson, in Judgment of January 5, 2004; and (3) Order for Immediate Writ of Possession, Assistance of Execution or Execution. Rules 55(b)(2), 11(a)(2)(A)(B); 60(b)1-3,5-7; &59(e), Filed January 20, 2004	1027
Plaintiff John N. Bach's Notice of Motions and Motions Re (1) Reconsideration of Court's Previous Order Re His Answering Defendants Hill's Discovery Set; (2) for Additional Time to Answer/Respond, Etc. to Said Hill's Discovery Set After Plaintiff's Motions for Further Discovery Sanctions and Rule 56(f) Motions are Heard; and (3) for Relief from Any Missing of Discovery Complaine Due Date by Plaintiff, Etc. IRCP, Rules 11(a)(2), Rule 37, 60(1)-(6), Filed March 11, 2004	1188
Plaintiff John N. Bach's Notice of Motion & Motion Re: (1) Reconsideration of Default Judgment Terms of September 21, 2004; and (2) Entry of Different Default Judgment Against Jack Lee McLean & His Estate, Especially Quieting All Title & Ownership of McLean to Plaintiff John N. Bach in Peacock & Drawknife Properties, Plus Full Permanent Injunction, Etc. (IRCP, Rule 11), Filed October 5, 2004	1392

Plaintiff John N. Bach's Pretrial Statement of Objections & Requests, Etc., Per IRCP, Rule 16(c), 16(d), etc., Filed January 15, 2004	1012
Plaintiff John N. Bach's Submission of Documentary Evidence in Further Support of His Motions Numbers (1) & (2), filed Oct. 5, 2004 & Argued Nov 4, 2004 @ 9:15 a.m. Before Judge St. Clair, Filed November 5, 2004	1398
Plaintiff John N. Bach's Trial Brief No. Three (3) Re for Immediate Entry of Judgment Quieting Title to Plaintiff on Those Properties Subject of Second, Third, and Fourth Counts, Reserving Issues of All Damages Thereon, Filed June 2, 2003	0566
Pre-Trial Order, Filed April 19, 2004	1226
Receipt, Dated April 1, 2004	1218
Remittitur, Filed February 2, 2005	1463
Request for Additional Record, Filed September 1, 2005	1698
Request for Additional Record, Filed September 2, 2005	1704
Request for Additional Transcript, Filed June 27, 2005	1682
Request for Additional Transcript, Filed September 1, 2005	1701
Request for Pretrial Conference, Filed December 15, 2003	0968
Return of Service Upon Katherine D. Miller aka Katherine M. Miller and Jack Lee McLean and Alva A. Harris, Individually & DBA SCONA, Inc., a sham entity and Bob Bagley & Mae Bagley, Filed August 8, 2002	0018
Second Affidavit of John N. Bach, In Support of Motions Filed February 25, 2005, Filed March 7, 2005	1571
Second Order on Pending Motions, Filed September 19, 2002	0050
Seventeenth Order on Pending Motions, Filed August 28, 2003	0843
Seventh Order on Pending Motions, Filed January 29, 2003	0195
Sixteenth Order on Pending Motions, Filed July 8, 2003	0801
Sixth Order on Pending Motion, Filed January 28, 2003	0189
Special Appearance of Katherine M. Miller, Filed August 7, 2002	0017

Special Verdict, Filed June 19, 2003	0621
Stipulation and Order for Dismissal with Prejudice, Filed February 7, 2005	1490
Summons on First Amended Complaint, Dated September 27, 2002	0204
Supplemental Affidavit No. 1. To Plaintiff's Further Affidavit Re Issuance of Permanent Injunction, Etc., filed Jan. 12, 2005, Filed January 13, 2005	1430
Supplemental Affidavit of John N. Bach, in Support of His Motions, to Disqualify the Honorable Richard T. St. Clair, and All Other Motions Filed July 9, 2003 and July 2, 2003, Filed July 16, 2003	0817
Tenth Order on Pending Motions, Filed April 2, 2003	0326
Third Order on Pending Motions, Filed October 15, 2002	0134
Thirteenth Order on Pending Motions, Filed May 6, 2003	0442
Thirtieth Order on Pending Motions, Filed July 14, 2004	1334
Thirty Fifth Order on Pending Motions, Filed February 11, 2005	1494
Thirty First Order on Pending Motions, Filed August 18, 2004	1352
Thirty Fourth Order on Pending Motions, Filed December 10, 2004	1410
Thirty Second Order on Pending Motions, Filed September 21, 2004	1375
Thirty Seventh Order on Pending Motions, Filed May 11, 2005	1648
Thirty Sixth Order on Pending Motions, Filed March 17, 2005	1617
Thirty Third Order on Pending Motions, Filed November 30, 2004	1404
Twelfth Order on Pending Motions, Filed April, 2003	0346
Twentieth Order on Pending Motions, Filed January 6, 2004	0993
Twenty Eighth Order on Pending Motions, Filed May 6, 2004	1289
Twenty Fifth Order on Pending Motions, Filed March 16, 2004	1196
Twenty First Order on Pending Motions, Filed January 16, 2004	1023
Twenty Fourth Order on Pending Motions, Filed March 2, 2004	1109

Twenty Ninth Order on Pending Motions, Filed July 6, 2004	1310
Twenty Second Order on Pending Motions, Filed February 12, 2004	1061
Twenty Seventh Order on Pending Motions, Filed April 21, 2004	1266
Twenty Sixth Order on Pending Motions, Filed April 21, 2004	1256
Twenty Third Order on Pending Motions, Filed February 23, 2004	1092
Verified Answer, Filed July 1, 2003	0779
Verified Answer to First Amended Complaint, Filed June 6, 2003	0599
Verified Answer to First Amended Complaint, Filed June 27, 2003	0734

FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date September 21, 2004  
Time 4:00  
Deputy Clerk M Southwick

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka  
KATHERINE M. MILLER, ALVA  
HARRIS, Individually & dba  
SCONA, INC., JACK LEE McLEAN,  
BOB FITZGERALD, OLE OLSON, BOB  
BAGLEY & MAE BAGLEY, husband and  
wife, BLAKE LYLE, Individually  
and dba GRAND TOWING, GALEN  
WOELK and CODY RUNYAN,  
Individually & dba RUNYAN &  
WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARL  
HAMBLIN, STAN NICKELL, BRET HILL  
& DEENA R. HILL, and DOES 1  
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**THIRTY SECOND ORDER  
ON PENDING MOTIONS**

**I. INTRODUCTION**

Pending before the Court is defendant Galen Woelk's motion for partial summary judgment on the Ninth, Twelfth and Thirteenth Counts of the first amended complaint, filed on July 27, 2004.

THIRTY SECOND ORDER ON PENDING MOTIONS

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001375

Defendant Woelk's motion for partial summary judgment was supported by the affidavit of Galen Woelk and the affidavit of counsel with attached copies of Bach's Chapter 13 bankruptcy petition and schedules filed on August 4, 1997 in the U. S. Bankruptcy Court (Eastern District for California) in case 97-31942-A-13. Woelk also filed on that date a legal memorandum in support of his motion.

On August 16, 2004, plaintiff John Bach filed an affidavit in opposition to the motion for partial summary judgment. On August 24, 2004, defendant Woelk filed a reply memorandum.

On August 31, 2004, the Court heard oral argument on the motion. During the hearing plaintiff Bach filed a copy of his August 4, 1997 Chapter 13 bankruptcy plan and a copy of his declaration in opposition to motion for summary judgment filed in U.S. District Court case CV-01-266-TGN. Also, plaintiff Bach was granted leave to file a legal memorandum on bankruptcy law, and this memorandum was filed on September 3, 2004.

Having considered the motion, affidavits filed in support and in opposition, the record in this case consisting of testimony at hearings and trials, affidavits and excerpts of depositions, the legal memoranda filed by the parties, and the

oral arguments of the parties or their counsel, this Court renders the following decision on the pending motion.

## **II. STANDARDS FOR DECISION**

By this reference, the Court incorporates the legal standards for determining motions for partial summary judgment as set forth in previous memorandum decisions in this case.

## **III. MATERIAL FACTS**

Between 1992 and 2000, plaintiff John Bach acquired interests in real estate in Teton County, Idaho through use of the business names Targhee Powder Emporium, Unlimited, Targhee Powder Emporium, Ltd., and Targhee Powder Emporium, Inc. However, Bach never filed articles of incorporation with any Secretary of State for these corporations, nor did he file assumed business name certificates in Idaho disclosing any interest in these businesses. Although Bach used these three corporation or business names, he treated all property interests acquired in those names as his own property.

On August 4, 1997, Bach filed a chapter 13 bankruptcy petition in U. S. Bankruptcy Court in the Eastern District of California, along with the required schedules of debtor's assets. Bach's schedules as originally filed and later amended and supplemented did not list any interest in any real property in the state of Idaho, except 5 acres near Atomic City, Idaho.



On August 4, 1997, Bach filed a proposed Chapter 13 bankruptcy plan. This plan was 2 pages long, and specified paying \$60.00 per month to the Chapter 13 trustee for 18 months, and that 3 real properties in California owned by Bach and his ex-wife Janet would be sold to pay creditors during the life of the plan. Bach stated in the plan that in addition to these properties "There is [a] fourth parcel owned by this debtor, in Atomic City, Idaho, which is worthless and grows high desert weeds and rabbits." As found in this Court's Twenty Ninth Order, this statement was false because Bach had acquired interests in the Miller 86.6 acre property, the 8.5 acre property, the Hills' 1 acre property, the Drawknife property and the Peacock property previous to August, 1997.

On April 2, 1998, the Bankruptcy Court confirmed Bach's Chapter 13 plan. On September 28, 2001, the Bankruptcy Court entered a discharge order. On December 28, 2001, the Chapter 13 trustee filed his final report, and the bankruptcy case was closed.

Between 1994 and late 2000, Bach maintained a checking account at the Driggs Branch of the Bank of Commerce with the name of Liponis Emporium Trust Account. Apparently this account was used in part by Bach to pay expenses related to Teton County real property jointly owned by Bach, Mark Liponis and Jack

McLean, and all three were listed on the account signature card. This account was not listed on Bach's bankruptcy schedules. In October or November, 2000, Bach deposited into this account \$15,000.00 loaned to him by his friend Sanford Beck of Davis, California. On November 14, 2000, McLean a client of defendant Woelk withdrew this \$15,000.00 from the account without knowledge or permission from Bach. After Bach learned of McLean's actions, he filed a criminal complaint against McLean. During the course of the criminal proceeding, Woelk wrote Bach a number of letters promising to have McLean return the \$15,000.00, however Woelk reneged on his promise and had McLean deposit the \$15,000.00 with the clerk of court in a separate action.

In November, 2000, at Woelk's office in Driggs, defendants Harris, Miller and McLean met and formed a corporation named Targhee Powder Emporium, Inc. for the purpose of deeding Bach's interest in the above mentioned Teton County real properties to defendants Miller, McLean, Dawson, Liponis, Harris and Scona. As stated above Bach held his interest in said real properties under the names "Targhee Powder Emporium, Inc., Ltd. or Unltd.," although Bach had never incorporated such corporations or filed fictitious name certificates for such business names. After forming this new corporation, McLean then acting as vice

president signed various deeds prepared by Harris, and Harris had such deeds recorded.

Bach and Woelk were not the best of friends. Thus, at various times from 2000 to December, 2001, Woelk called Bach names that disparaged Bach's Montenegrin ancestry, and accosted Bach in the courthouse.

#### IV. ANALYSIS

Defendant Woelk's motion for partial summary judgment seeks dismissal of the Ninth Count (conversion of personal property), Twelfth Count (malicious harassment) and Thirteenth Count (punitive damages) based on lack of standing because those are assets owned by the trustee appointed in his California bankruptcy estate. Woelk cites in support of this argument this Court's Twenty Ninth Order on Pending Motions, which held that Bach lacked standing to sue for slander of title to real property in Teton County owned in August, 1997 but not listed on required bankruptcy debtor schedules. This Court relied on 11 U.S.C. § 541(a)(1); *Lopez v. Specialty Rests. Corp*, 283 B.R. 22(9<sup>th</sup> Cir. BAP 2002); and *Zimmerman v. Jayo*, U.S. Bankruptcy Court (Idaho), 00-20322 (adversary case 01-6080) unpublished decision dated February 3, 2003 (Myers, J.).

Woelk argues that under the holding in the Twenty Ninth Order Bach has no standing to sue for causes of action accruing

during the life of his Chapter 13 plan and before his bankruptcy case was closed in December, 2001, because 11 U.S.C. § 1306(a)(1) includes in the Chapter 13 estate "all property of the kind specified in [section 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted." Woelk cites *Matter of Lybrook*, 951 F.2d 136, 137 (7<sup>th</sup> Cir. 1991); and *Matter of Baker*, 154 F.3d 534, 536 (5<sup>th</sup> Cir. 1998).

In opposition, plaintiff Bach argues that this Court has quieted title in Bach as against several other defendants as to the 8.5 acres, the Peacock property and the Drawknife property. He further argues that this Court has no subject matter jurisdiction to decide what assets are in a bankruptcy estate. He further argues that his former bankruptcy trustee has no interest in these properties because his creditors were satisfied out of the sale of his California real property and the trustee distributed \$25,000 to Bach when the case was closed.

Federal courts have exclusive jurisdiction of all bankruptcy cases involving a debtors' bankruptcy petition. *Matter of Wood*, 825 F.2d 90 (5<sup>th</sup> Cir.1987); *Stevenson v. Prairie Power Co-Op, Inc.*, 118 Idaho 52, 57, 794 P.2d 641, 646 (App.1989). However, Idaho state courts have concurrent

jurisdiction with federal courts to adjudicate proceedings falling under 28 U.S.C. § 1334(b), including state common law causes of action. See *Stevenson, supra*. (Affirming state district court decision on breach of contract claim of chapter 11 debtor).

As concluded in the Twenty Ninth Order, this court has subject matter jurisdiction to determine a lack of standing to sue defense as applied to state common law causes of action alleged by Bach's amended complaint.

Had Bach reopened his California bankruptcy case, his former Chapter 13 trustee could have decided to either join in this action or abandon the properties, or institute an adversary proceedings against Woelk in federal court. Further either Bach or Woelk could have petitioned the Bankruptcy Court to reopen Bach's case and decide this standing issue. Neither has done so.

*Lybrook* and *Baker* cited by Woelk both involved bankruptcies that were filed under Chapter 13, but later converted to Chapter 7, and held that post filing assets acquired by the debtor became assets of the Chapter 7 estate under 11 U.S.C. § 1306(a)(1). However, Bach's bankruptcy case was never converted to a Chapter 7, so *Lybrook* and *Baker* are not applicable. In Bach's case, the post filing assets vested in Bach under 11 U.S.C. § 1327(b) upon confirmation of the plan,

"except as otherwise provided in the plan or in the order confirming the plan."

Attached to this Order is a copy of Bach's Chapter 13 plan. His plan did not mention post filing assets. Neither party has put in this record the order confirming the plan. Rule 56, I.R.C.P., requires that the material facts in the record, and inferences therefrom, be construed in favor of Bach. This Court infers that the confirming order did not mention post filing assets as being retained by the trustee because Bach was only paying \$60.00 per month and the California real properties were funding the bulk of payments to creditors. Had Bach disclosed his interests in the Teton County, Idaho real properties, the creditors and trustee may well have acted differently. However, unless one of the parties petitioning the Bankruptcy Court to re-open Bach's bankruptcy case, there is no evidence that the post filing assets would have been required to fund payments to Bach's creditors.

Therefore, the motion for partial summary judgment must be denied.

#### V. CONCLUSION AND ORDER

Based on the foregoing analysis, this Court concludes and IT IS HEREBY ORDERED that:

1. defendant Galen Woelk's motion for partial summary

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

(MAIL)

David Shipman  
P. O. Box 51219  
Idaho Falls, ID 83405-1219

(MAIL)

Gregory Moeller  
P. O. Box 250  
Rexburg, ID 83440-0250

(MAIL)

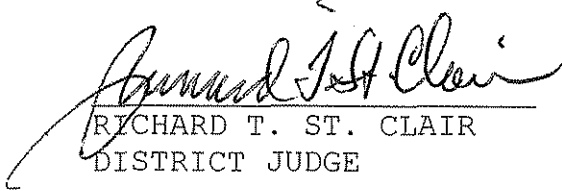
RONALD LONGMORE  
Clerk of Court



Deputy Court Clerk

judgment on Ninth, Twelfth and Thirteenth Counts is DENIED.

DATED this 21st day of September, 2004.

  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of September, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Telefax No. 626-441-6673 (MAIL)

John N. Bach  
P.O. Box 101  
Driggs, ID 83422 (MAIL)

Alva Harris  
P. O. Box 479  
Shelley, ID 83274  
Telefax No. 208-357-3448 (MAIL)

Galen Woelk  
Runyan & Woelk, P.C.  
P.O. 533  
Driggs, ID 83422  
Telefax No. 208-354-8886 (MAIL)

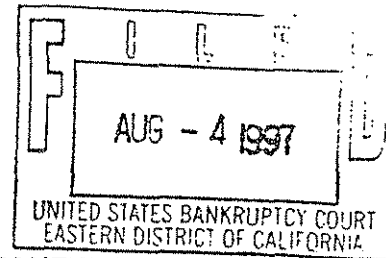
Jason Scott  
P. O. Box 100  
Pocatello, ID 83204  
Telefax No. 208-233-1304 (MAIL)

Jared Harris  
P. O. Box 577  
Blackfoot, ID 83221  
Telefax No. 208-785-6749 (MAIL)



JOHN NICHOLAS BACH  
1399 F. First Avenue  
Chico, CA 95926  
Debtor, In Pro Per  
(818)

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO  
DIVISION



In re:

CASE NO: \_\_\_\_\_

JOHN NICHOLAS BACH,  
Debtor.

DEBTOR'S PLAN, CHAPTER 13

The debtor's plan is to be coordinated and/or consolidated with the debtor's plan approved and/or to be modified in that Chapter 13 proceeding before this Court, in re JANET L. BACH, Debtor, Case number 960003642-A-13, before the Honorable D. Russell. Attached hereto is a copy of her initial plan as believed filed in her said Sacramento Division action.

In said action number 960003642-A-13, there is scheduled for hearing on August 25, 1997 a status conference re adversary proceeding on Janet L. Bach's Complaint to Obtain Approval, via §363(h) for sale of this debtor's and her interests, of their home residence. This debtor does not object to said sale and feels it is overdue, but does not believe it goes far enough as it seeks to avoid other community property assets/holdings of said Janet L. Bach and this debtor which also should be sold.

The principal assests of this debtor and said ex-wife are three (3) real property holdings in California, two in Butte County and the other in Glenn County, CA. There is fourth parcel owned by this debtor, in Atomic City, Idaho, which is worthless and grows high desert weeds and rabbits. The three real properties in Butte and Glenn County are jointly owned by this debtor and said ex-wife, and were ordered sold by the Butte County Superior Court, Bach Dissolution of Marriage Action, Number 112826, with said court retaining jurisdiction to issue further orders, render any further accountings between the parties and complete the division of community properties per California Rules of Court, Rule 1412, et.

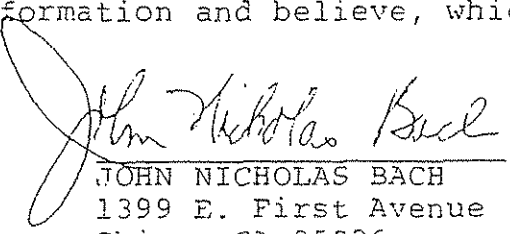
All three (3) properties were listed for sale through Century 21, Jeffries Lydon, Mr. Kelly D. Lydon, 1722, Mangrove Avenue, Suite

36, Chico, CA., 95926, telephone: (916) 345-6618 and were to be shown regularly via the Chico Multiple List Board. The residence of debtor and said ex-wife is located at 956 Vallombrosa, Chico, and is a very desirable piece of realty. The second property in Chico, is a 2.86 acre parcel, jointly owned with Dr. and Mrs. Donald Richey, as to an undivided one-half, and debtor and said ex-wife, as to an undivided one-half. The Glenn County property is in escrow having been sold for \$60,000.00 pending approval by this bankruptcy court, final instructions of closing, and release of net funds, after realtor commissions, escrow fees, other related escrow charges, etc., are paid, to this Bankruptcy. (See attached January 28 and 29, 1997 letters from Chapter 13, Trustee and North State Title Company, which are incorporated herein. However, said ex-wife in this court's case number 96 3642-A-13, has not filed any motion to closed said Glenn County property sale, although this debtor has demanded that she do so.

Debtor John Nicholas Bach, proposes that, commencing August 20, 1997, and continuing for eighteen (18) months, that he pay \$60.00, or any other minimal sum as allowed by this Court and the Trustee, per month to the Trustee and during said 18 months and hopefully a lot shorter or quicker, all said three real property holding are to be sold, subject to this court's jurisdiction, approval and the net proceeds therefrom, after paying regular fees, commissions, etc., of escrow,

Debtor will be filing herewith, within 15 days from date of this Plan's and the Petition to which it is attached, per Rule 1007(a)-(b) & (c), Federal Rules Bankruptcy Procedure, all appropriate Schedules, List and/or Statements of Financial Affairs, etc.

I declare this 1st day of August, 1997 under penalty of perjury, Chico, CA, that the foregoing information is true, except as to any matters stated upon my information and believe, which I believe to be true.

  
JOHN NICHOLAS BACH  
1399 E. First Avenue  
Chico, CA 95926  
(818)

This is to certify that this is a true and correct copy  
of the original 2 page(s) filed on 8/14/97  
in the office of the Clerk, U.S. Bankruptcy Court.

RICHARD G. HELTZEL  
U.S. Bankruptcy Court

By   
Deputy Clerk



Affidavit

163360

September 10, '04.

I, Lynn Barrie McLean, personal representative of Jack Lee McLean, deceased, do solemnly swear to the truth of the following:

FILED

SEP 23 2004

TETON CO.  
MAGISTRATE COURT

My father, Jack Lee McLean, was one of two children in the family of Robert McLean and Rose McLean of Kangley, British Columbia. Robert (senior) McLean, my father's father, died over 30 years ago.

Jack was occupied as a western artist and Jack's brother, Robert McLean (jr.) was a marine engine mechanic until his death, over twenty years ago.

Jack has no living relatives, except for myself, with the McLean surname. No person, living or deceased, in my father's family, was ever an attorney or employed in the legal profession in any capacity.

RECEIVED

SEP 13 2004

TETON CO., ID  
CLERK RECORDER

Instrument # 163360

DRIGGS, TETON, IDAHO

2004-09-13

09:56:21 No. of Pages: 1

Recorded for: LYNN BARRIE MCLEAN

NOLAN G. BOYLE

Fee: 3.00

Ex-Officio Recorder Deputy

Index to: AFFIDAVIT



NOTARY

COMM. EXPIRES 5-18-2005

163360

001388

RECEIVED

SEP 13 2004

Affidavit 163361 Sept. 10, '04.

CLERK OF DISTRICT COURT  
JUDICIAL RECORDS

I, Ryan Barrie McLean, the personal representative of Jack Lee McLean, deceased, do solemnly swear to the truth of the following:

FILED  
4:29 PM  
SEP 23 2004

TETON CO.  
MAGISTRATE COURT

Between 1994 and 1997, Jack Lee McLean told John N. Bach said he was an attorney and could assist him with legal matters.

I have personal knowledge that Jack trusted and believed John N. Bach at this time. My father, Jack, believed there was good in most people and he trusted people implicitly, and at face value. He (Jack) trusted John N. Bach to the extent that he allowed him to draw up a trust (JACK LEE MCLEAN FAMILY TRUST) in 1994. In that trust, which I have a copy of, John N. Bach named himself as the executor!

John Bach convinced my father, Jack Lee McLean, that he had international connections, and could sell his paintings. Believing John to be honest at this time, my father gave John several paintings, which have never been returned. To the best of my knowledge, having perused most of my father's paperwork, Jack never received any money from John N. Bach for these paintings.

In 1998, my father, Jack Lee McLean, informed my sister and I that he and others had discovered that Bach was fraudulently using other people's money,

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inflating selling prices on land to secondary buyers, and had drawn up the JACK LEE MCLEAN FAMILY TRUST by misrepresenting himself as an attorney. When these actions were confirmed, as well as the disbarment of John N. Bach in California for fraud, Jack Lee McLean engaged Roy Moulton to revoke the JACK LEE MCLEAN FAMILY TRUST as drafted by John N. Bach in 1994, to draw up a new trust, called the "MCLEAN FAMILY TRUST," and to transfer all deeds and estate holdings to the new trust.

In addition, Jack Lee McLean registered a notarized statement terminating all powers of attorney previously granted by him to John N. Bach. Bach was "not to represent Jack Lee McLean in any matters, public or private," and further, that "all agreements between them were null and void" as they were obtained by false representation. 149375

Jack Lee McLean would never have agreed to or given power to John N. Bach to act on his behalf for any reason whatsoever, after my father no longer trusted him, believed he was a crook, and began litigation against Bach. In 1999, John N. Bach was convicted of battery against Jack Lee McLean. Jack Lee McLean would never transfer property, deeds, or any part of his estate to John N. Bach. (K. L. P. 001390 - M.C. 163361)

Jack Lee M'Hean told me he had asked John N. Bach to return any and all paintings, real estate, and other property to him immediately. Jack Lee M'Hean told me John N. Bach refused to do so and in fact, claimed that all of Jack's possessions now belonged to John N. Bach.

I, Lynn Barrie M'Hean, certify that this affidavit, dated Sept. 10, '04, was written by my hand in Teton County, Idaho. (3 Pages)

Lynn Barrie M'Hean  
of Winnipeg, Manitoba  
Canada

SUBSCRIBED & SWORN TO BEFORE  
ME THIS 13th DAY OF Sept. 10, 2004  
*Maureen Green*  
NOTARY PUBLIC  
RESIDING AT: Teton Co.  
MY COMMISSION EXPIRES: 08/05/08

MAUREEN GREEN  
Notary Public  
State of Idaho

Instrument # 163361  
DRIGGS, TETON, IDAHO  
2004-09-13 09:56:21 No. of Pages: 3  
Recorded for: LYNN BARRIE MCLEAN  
NOLAN G. BOYLE Fee: 9.00  
Ex-Officio Recorder Deputy *M. Green*  
Index to: AFFIDAVIT

163361

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FILED

OCT 05 2004

TETON CO.  
DISTRICT COURT

JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
(Seasonal; P.O. Box 101  
Driggs, ID 83422  
Tel: (626) 799-3146  
Plaintiff & Counterclaim  
Defendant Pro Per

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff &  
Counterclaim  
Defendant,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, et al.,

Defendant &  
Counterclaimant,  
& Other Defendants.

PLAINTIFF JOHN N. BACH'S  
NOTICE OF MOTION & MOTION  
RE: (1) RECONSIDERATION OF  
DEFAULT JUDGMENT TERMS OF  
SEPTEMBER 21, 2004; and  
(2) ENTRY OF DIFFERENT DEFAULT  
JUDGMENT AGAINST JACK LEE  
McLEAN & HIS ESTATE, ESPECIALLY  
QUIETING ALL TITLE & OWNERSHIP  
OF McLEAN TO PLAINTIFF JOHN N.  
BACH IN PEACOCK & DRAWKNIFE  
PROPERTIES, PLUS FULL PERMANENT  
INJUNCTION, ETC. (IRCP, Rule 11)

MOTION HEARING DATE TO BE SPECIALLY  
NOTICED IN DRIGGS, VIA CLERK

PLAINTIFF JOHN N. BACH, does hereby give NOTICE OF HIS MOTIONS FOR ORDERS re (1) RECONSIDERATION OF THE DEFAULT JUDGMENT TERMS as entered on September 21, 2004, but which judgment was not served via mail upon plaintiff until September 24, 2004, three (3) days later, as said judgment is not only against the law and authorities of both Idaho and California, but the court has exceeded its jurisdiction, abused its discretion and once again, acted as a legislature of one biasedly, prejudicially and discriminatorily, against plaintiff, ignoring the laws, principles and authorities of a default judgment trial per the FIRST AMENDED COMPLAINT, which complaint not only incorporates the averments entirely of the original complaint but also the testimony and evidence presented and admitted before the court on August 13 and August 15, 2002, along with the further incorporation of the original complaint's prayer for money damages specified therein, including punitive damages, and with the court deliberately overlooking and excluding the irrevocable power of

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attorney executed by Jack McLean and given to plaintiff by which plaintiff validly executed a WARRANTY DEED recorded in Teton County, being instrument number 148402, which deed has been received into evidence in that action Teton CV 01-059, and also herein on August 13 and August 15, 2002 and during the jury trial of June 10-19, 2003 and again during the evidentiary trial of September 10, 2004 during which the court committed further grievous and prejudicial error by refusing to hearing evidence, parol evidence, about the complete unintergrated agreement between plaintiff and JACK McLEAN, which agreement both per then California and Idaho law and authorties, later per I.C. 54-325, terminated JACK McLEAN entire interest upon not only his death but earlier upon not just his breach of the other terms of said joint venture agreement, but via the irrevocable power of attorney, which was properly, validly and competently executed, recorded and effectively deprived Jack McLean of any and all interest, ownerships and claims to the PEACOCK and DRAWNKIFE REAL PROPERTIES AND INVESTMENTS via the total unintegrated joint venture agreements. Moreover, the court in its DEFAULT JUDGMENT of September 21, 2004, not served until September 24, 2004, holding that the repeal of I.C. 53-325, somehow revised and rewrote, without any such firm agreement or evidence, the total unintergrated agreements between plaintiff and McLean, which agreements as to PEACOCK and DRAWKNIFE properties were solely personal to plaintiff and McLean, and their agreements: that McLean's children, nor heirs nor estate, nor assignees, etc., had any claim via McLean, without plaintiff's express written permission to said properties and that all his interests, ownership and claims had been terminated by his default of said total unintegrated agreement, and said executed WARRANTY DEED, instrument 148402, such findings and or conclusions, are in violation of I.C. 28-2-202, which allows any writing intended to be a final expression of an agreement to be "supplemented (a) By course of dealing or usage of trade (section 28-1-205) or by course of performance (section 28-2-208; and (b) Evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of terms of the agreement" which the written joint venture portions of the total unintegrated agreement were not so intended and which the court refused to received evidence as to all circumstances, discussions, oral agreements and performances not just sur-

PT'S MENS re RECONSID of Def't Judgment, Sept 21, 2004, & Modificatn P. 2.



rounding the execution of the written portions of said total unintegrated agreements, but also the subsequent conduct of the parties, per Interform Co. v. Mitchell, 575 F.2d 1270 (9th Cir 1978) and Anderson & Nafziger v. G.T. Newcomb, Inc. 100 Idaho 175, 595 P.2d 709 (1979).

(2) Plaintiff also seeks further modification of said default judgement as to his damages, special, general and also punitive damages, etc., sought per his original complaint incorporated into the first AMENDED COMPLAINT, all as testified hereto on June 10-19, 2003, during the default evidentiary trials/hearings especially the latter of September 10, 2004, along with all exhibits previously admitted or admitted further during said latter hearings, and affidavits of plaintiff, and expressly requests that the foregoing is required to be awarded plaintiff per the provisions of ICRP, Rules 8(d), the waiver of all affirmative defenses, etc., by McLean per Rule 8(c); the liberality of construction, inferences and circumstantial evidence of the pleadings where default has occurred (Fox v. Cosgriff, 64 Idaho 448, 133 P.2d 930 (1943); per Rule 8(f); per Rule 17(a), et seq, and Rule 55(b)(2) and 54(c), especially the court's refusals, failures and avoidances of jurisdiction to consider and issue a permanent injunction against McLean, re dissolution of said joint ventures with plaintiff and plaintiff's entitlements to a permanent injunction and exclusions of all McLean's heirs, assignees, permittees, etc., from said former joint venture holdings and properties which are now exclusively in the majority holdings, control and management of/by plaintiff. As a brief example Blake Lyle's continuous habits of threatening persons, assaulting, battering and even attempting to inflict mayhem or death upon them, finally resulted in Teton County getting a restraining order or directive that he can not enter the DMV offices in Driggs and is precluding from personally doing business via said offices.

These Plaintiff's MOTIONS will be further supplemented with affidavits and further authorities and/or memorandum brief within five (5) days from date hereof. DATED: October 5, 2004

001394

JOHN N. BACH

CERTIFICATE OF SERVICE BY MAIL: I certify that copies of this document were served this date, via the U.S. Mail, upon Judge St. Clair, Alva Harris, Greg Meadows and Galne Wuelk, counsel of record remaining herein.

STATE OF IDAHO  
DISTRICT COURT OF BONNEVILLE COUNTY  
605 N CAPITAL AVENUE  
IDAHO FALLS ID 83402

10/24/97  
1377 US POSTAGE PERMIT NO 2113  
1354 \$01.06 SEP 24 97  
1344 BONNEVILLE ID 83402

John N. Bach  
PO Box 101  
Driggs, ID 83422

001395

FILED

OCT 19 2004

TIME: 3:15  
TETON CO. DISTRICT COURT

JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Tel: (626) 799-3146  
(Idaho Local: P.O. Box 101,  
Driggs, ID 83422  
(208) 354-8303  
Plaintiff Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, et al.,

Defendnatns.

PLAINTIFF JOHN N. BACH;s NOTICE  
OF MOTIONS AND MOTIONS RE; (1)  
HEARING ON ALL PLAINTIFF'S MOTIONS  
FILED SINCE SEPTEMBER 27, 2004;  
(2) FOR ORDER STRIKING, QUASHING  
OR DENYING DEFENDANTS WOELK, RUNYAN'S  
MOTION TO AMEND/MODIFY, ETC., COURT'S  
32nd ORDER; (2) FOR ORDER TO SET  
PRETRIAL CONFERENCE ON REMAINING &  
AMENDING ISSUES; and (4) FOR ORDER  
GRANTING PLAINTIFF LEAVE TO AMEND  
& ADD CLAIMS AGAINST DEFENDANTS  
WOELK, RUNYAN & THEIR LAW FIRM. (IRCP  
Rules 12(f), 15(a), etc., )

DATE OF HEARING: Nov. 4, 2004  
TIME OF HEARING: 9:15 a.m.  
PLACE: Bonneville Courthouse,  
Idaho Falls, ID 83405

COMEE NOW PLAINTIFF JOHN N. BACH, and does hereby give NOTICE  
THAT ON November 4, 2004, @ 9:15 a.m., he will call up for hearing  
& argument, (1) HIS MOTIONS filed herein since this Court's last  
DEFAULT JUDGMENT against The Estate of Jack Lee McLean and this  
Court's 32nd ORDER, and that at said same date, time and palce,  
at the Bonneville County Courthouse, 605 N. Capital, Idaho Falls,  
Idaho, he will further move the court for all of the following ORDERS:  
(2) TO STRIKE, QUASH & ORDER DENY DEFENDANTS WOELK'S, RUNYAN'S & THEIR  
LAW FIRM'S MOTIONS TO AMEND, MODIFY OR CHANGE ANY PORTIONS OF SAID  
32ND ORDER; (3) TO SET PRETRIAL/TRIAL ON REMAINING & AMENDED CLAIMS & ISSUES  
against Defendants WOELK, RUNYAN & THEIR LAW FIRM FOR PRETRIAL CONFER-  
ENCE; and (4) FOR AN ORDER ALLOWING, GRANTING LEAVE TO PLAINTIFF  
LEAVE TO FILE FURTHER AMENDED CLAIMS ( such as intentional inflict-  
ion of emotionall distress; destruction, withholding or spoilation  
of evidence; further conversions, destruction and arson burning of  
plaintiff's structures, personal belongings, records, files, etc.;  
and/or violations of 42 USC sections 1983, 1985(2)(3) since the filing  
of the FIRST AMENDED COMPLAINT herein), such amended, added and or  
PT'S NTCE OF MTNS & MTNS, for Hr'g on Nov. 4, 2004 @ 9:15 a.m. P. 1.

001206-

expanded claims to be brought solely against defendants, Galen Woelk, Cody Runyan, individually and dba RUNAYN & WOELK, such motions to be based upon the filings by the plaintiff herein and hereafter, before the date and time for hearing notice hereinabove. Such further amended claims will also includes requests for order to have punitive damages permitted allowed, against both said defendants and their law firm. Additional memoranda briefs will be presented for filing before the date of hearing, along with the proposes amendments re additional claims sought to be allowed to be filed by plaintiff.

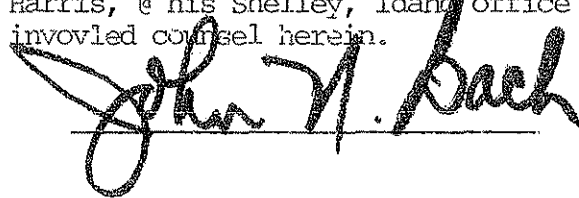
Preliminarily, plaintiff cites the following case authorities in support of all his foregoing motions; Iron Eagle Development LLC v. Quality Designs Systems, Inc., 65 P.3d 509, 513-514, 138 Idaho 587; Payne v. Wallace (Id. App 2001) 32 P.3d 695, 136 Idaho 303; and Cheney v. Palos Verdes Investment Corp. 102 Idaho 897, 665 P.2d 661 (1983).

DATED: October 16, 2004

  
JOHN N. BACH, Plaintiff  
Pro Se

CERTIFICATE OF SERVICE: I the undersigned, hereby certify that on Oct. 16, 2004, I did mail separate copies of this foregoing document in individual envelopes with first class mail affixed thereto, to each of the following at their stated addresses of record herein: Judge Richard T. St. Clair, c/o Bonneville Courthouse, Idaho Falls, Craig Meadows @ his Boise, Idaho office; Galen Woelk, @ his Laramie, WY., address and Alva Harris, @ his Shelley, Idaho office address, such being the only interested and invovled counsel herein.

DATED: October 16, 2004



JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Tel: (626) 799-3146  
(Seasona; P.O. Box 101  
Driggs, ID 83422)  
Plaintiff & Counterclaim  
Defendant PRO SE

FILED  
12:48 PM  
NOV 05 2004  
TETON CO.  
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff &  
Counterclaim Defendant,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER,

Counterclaimant,  
Defendant and

ALL OTHER DEFENDANTS.

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S  
SUBMISSION OF DOCUMENTARY  
EVIDENCE IN FURTHER SUPPORT  
OF HIS MOTIONS NUMBERS (1)  
& (2), filed Oct. 5, 2004  
& Argued Nov 4, 2004 @ 9:15  
a.m. Before Judge St. Clair

Plaintiff does hereby submit, per the attached copy  
of Teton County Sheriff's document, faxed June 11, 2004 to the  
Idaho State Police in Idaho Falls, Idaho, which official docu-  
ment was used by said sheriff's office and others to file wholly  
contrived criminal charges against JOHN N. BACH, on June 14, 2004,  
of aggravated assault, in Teton CR 04-526, which case has been  
recently assigned to Judge St. Clair; said copy is true and correct  
as produced per initial although not complete discovery requests,  
and is requested not only to be judicially noticed by the Court  
but received as evidence herein supporting all of plaintiff's  
said requests via his motions filed October 5, 2004 and all requests  
per plaintiff's arguments made heretofore and on November 4, 2004  
before Judge St. Clair for permanent injunction against all defend-  
dants, especially defendants BLAKE LYLE, BOB FITZGERALD, McLEAN  
Estate, said estate's purported personal representative, attorneys,  
agents, along with OLE OLESON, KATHY MILLER, GALEN WOELK, CODY RUNY;  
RUNYAN & WOELK LAW FIRM, SCONA, INC., and or any other entities of  
said defendants, and others named as defendants herein from coming  
onto, trespassing, occupying or in any way or manner interfering  
with plaintiff's sole occupation, use, ownership, management and  
total enjoyment and beneficial use of said 40 acres known as PEACOCK  
INVESTMENT PROPERTY. DATED Nov 5, 2004. A copy has been faxed for  
all attorneys / parties this date.

To whom it may concern

The parties BLAKE LYLE and BOB FITZGERALD have our full permission to enter, occupy for whatever purpose they deem necessary build, store, landscape or cultivate the property known as (SW 1/4 of Section 6, Township 5 North, Range 4 East Boise Meridian, Teton County Idaho, 40 undivided acres more or less. On corner of Peacock Lane). They also have permission to provide access to whomsoever they wish.

Signed this 15<sup>th</sup> day of May 2004

Tanya Ehl

Lynn McLann

Box 68 Kootenay Bay B.C.

VOBIXO

250 225-3330

IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FILED  
4304-24  
NOV 09 2004  
TETON CO.  
MAGISTRATE COURT

JOHN N. BACH, )  
 )  
Plaintiff, )  
 )  
vs. ) MINUTE ENTRY  
 ) Case No. CV-2002-208  
 )  
KATHERINE D. MILLER, aka )  
KATHERINE M. MILLER, ALVA )  
A. HARRIS, individually and )  
dba SCONA, INC., a sham entity )  
JACK LEE McLEAN, BOB )  
FITZGERALD, OLE OLESON, BIB )  
BAGLEY and MAE BAGLEY, husband )  
and wife, BLAKE LYLE, )  
Individually and dba GRANDE )  
TOWING, and DOES 1 through 30, )  
Inclusive, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

On the 4th day of November, 2004, Plaintiff Bach's motion to reconsider default judgment against McLean entered on September 21, 2004, Defendant Woelk's motion for relief from 32<sup>nd</sup> order, Plaintiff Bach's motion to set pretrial conference and jury trial, Plaintiff Bach's motion to amend first amended complaint against Woelk came before the Honorable Richard T. St. Clair, District Judge, in open court at Idaho Falls, Idaho.

Mr. Ross Oviatt, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. John Bach appeared pro se on his own behalf as Plaintiff.

Mr. Craig Meadows appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Alva Harris appeared on behalf of Defendant(s) Harris, Fitzgerald, Lyle, Olson, Scona, Inc., and McLean.

Mr. Bach presented his motion to reconsider default judgment against McLean entered on September 21, 2004. Mr. Harris argued in opposition to the motion. Mr. Bach presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Meadows submitted Defendant Woelk's motion for relief from 32<sup>nd</sup> order on the record. The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Bach presented his motion to set pretrial conference and jury trial. Jury trial was scheduled for February 8, 2005. Pretrial conference was set for January 7, 2005, at 8:30 a.m. in the Bonneville County Courthouse.

Mr. Bach presented an oral motion for change of venue. Mr. Meadows will contact his client and advise the Court.

Mr. Bach withdrew his motion to amend first amended complaint against Woelk subject to renotification.

Court was thus adjourned.

  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

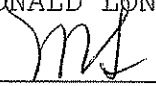
A:Bach.mine/1374@1011



CERTIFICATE OF MAILING

I certify that on the 4<sup>th</sup> day of November, 2004, I  
caused a true and correct copy of the foregoing document to  
be delivered to the following:

RONALD LONGMORE

  
Deputy Court Clerk

John N. Bach  
PO Box 101  
Driggs, ID 83422  
FAX (208) 356-9154  
1958 S. Euclid Ave.  
San Marino, CA 91108  
(626) 799-3146

Alva N. Harris  
PO Box 479  
Shelley, ID 83274  
(208) 357-3448  
FAX (208) 357-3448

Galen Woelk  
PO Box 533  
Driggs, ID 83422  
FAX (208) 354-8886

Jared Harris  
PO Box 577  
Blackfoot, ID 83221  
FAX (208) 785-6749

Craig L. Meadows  
PO Box 1617  
Boise, ID 83701-1617  
FAX (208) 342-3829

Teton County Clerk  
Teton County Courthouse  
ATTN: PHYLLIS  
89 N. Main, Ste 1  
Driggs, ID 83422  
FAX (208) 354-8496

Gregory W. Moeller  
PO Box 250  
Rexburg, ID 83440-0250  
FAX (208) 356-0768

001402

David H. Shipman  
Bart J. Birch  
PO Box 51219  
Idaho Falls, ID 83405-1219  
FAX (208) 523-4474

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date November 30, 2004  
Time 4:00 pm  
Deputy Clerk M. Southwick

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka  
KATHERINE M. MILLER, ALVA  
HARRIS, Individually & dba  
SCONA, INC., JACK LEE McLEAN,  
BOB FITZGERALD, OLE OLSON, BOB  
BAGLEY & MAE BAGLEY, husband and  
wife, BLAKE LYLE, Individually  
and dba GRAND TOWING, GALEN  
WOELK and CODY RUNYAN,  
Individually & dba RUNYAN &  
WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARL  
HAMBLIN, STAN NICKELL, BRET HILL  
& DEENA R. HILL, and DOES 1  
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**THIRTY THIRD ORDER  
ON PENDING MOTIONS**

**I. INTRODUCTION**

Pending before the Court are plaintiff John Bach's motion  
to reconsider and modify damage award in the default judgment  
entered on September 21, 2004 against Lynn McLean, as personal  
representative of Jack McLean and defendant Galen Woelk's motion  
THIRTY THIRD ORDER ON PENDING MOTIONS

for relief from the Thirty Second Order also entered on September 21, 2004.

On November 4, 2004, the Court heard oral argument on the motions. Having considered the motions, affidavits filed in support and in opposition, the record in this case consisting of testimony at hearings and trials, affidavits and excerpts of depositions, the legal memoranda filed by the parties, and the oral arguments of the parties or their counsel, this Court renders the following decision on the pending motions.

## **II. STANDARDS FOR DECISION**

By this reference, the Court incorporates the legal standards for determining motions for reconsideration as set forth in previous memorandum decisions in this case.

## **III. ANALYSIS**

Plaintiff Bach's motion raises some additional facts presented earlier in the record and some additional legal authority not previously argued. However, considering such facts and legal authority, this Court concludes that it properly determined the amount of damages against defendant McLean.

In addition Bach orally argued that the default judgment failed to permanently enjoin defendants who did not have an ownership interest in the real properties from entering such properties (as prayed for in the amended complaint), and

evidence of a written authorization signed by Lynn McLean allowing defendants Blake Lyle and Bob Fitzgerald permission to enter the Drawknife and Peacock properties was submitted. This Court agrees with Bach and concludes that defendants Lyle and Fitzgerald should be enjoined from entering any portion of the properties described in the complaint in which plaintiff Bach currently has an ownership interest. To the extent that any default judgment needs to be supplemented, plaintiff Bach may submit a proposed supplemental default judgment describing such properties.

Defendant Woelk's motion seeks assistance from the Court in pointing out where in this voluminous record, including oral testimony during hearings that have not been transcribed, that Bach presented facts as summarized in this Court's Thirty Second Memorandum Decision. While admittedly this Court provided a cursory summary of such facts and inferences from such facts in its decision, due to the press of other cases, this Court does not have time to comb through the record, nor is the Court willing to provide a transcript of hearings for any civil litigant. Suffice it to say that Woelk's motion for summary judgment was denied, and the jury will decide what facts are proved during the scheduled jury trial, and it is the jury's findings of the facts (not this Court's summary in the

Memorandum Decision) that will determine if Woelk has liability, not this Court.

#### IV. CONCLUSION AND ORDER

Based on the foregoing analysis, this Court concludes and THEREFORE IT IS HEREBY ORDERED that:

1. plaintiff Bach's motion to reconsider and modify damage award in the default judgment entered on September 21, 2004 against Lynn McLean, as personal representative of Jack McLean is DENIED;
2. plaintiff Bach's oral motion to enjoin defendants Fitzgerald and Lyle from entering portions of real properties described in the amended complaint in which Bach has ownership interest is GRANTED; and
3. defendant Galen Woelk's motion for relief from the Thirty Second Order entered on September 21, 2004 is DENIED.

DATED this 30th day of November, 2004.

  
\_\_\_\_\_  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Telefax No. 626-441-6673 (MAIL)

John N. Bach  
P.O. Box 101  
Driggs, ID 83422 (MAIL)

Alva Harris  
P. O. Box 479  
Shelley, ID 83274  
Telefax No. 208-357-3448 (MAIL)

Galen Woelk  
Runyan & Woelk, P.C.  
P.O. 533  
Driggs, ID 83422  
Telefax No. 208-354-8886 (MAIL)

Jason Scott  
P. O. Box 100  
Pocatello, ID 83204  
Telefax No. 208-233-1304 (MAIL)

Jared Harris  
P. O. Box 577  
Blackfoot, ID 83221  
Telefax No. 208-785-6749 (MAIL)

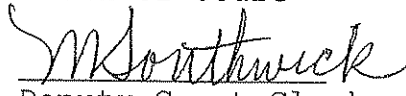
Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452 (MAIL)

David Shipman  
P. O. Box 51219  
Idaho Falls, ID 83405-1219 (MAIL)

Gregory Moeller  
P. O. Box 250  
Rexburg, ID 83440-0250

(MAIL)

RONALD LONGMORE  
Clerk of Court

  
Deputy Court Clerk



FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date December 10, 2004  
Time 11:45  
Deputy Clerk Msouthwick

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka  
KATHERINE M. MILLER, ALVA  
HARRIS, Individually & dba  
SCONA, INC., JACK LEE McLEAN,  
BOB FITZGERALD, OLE OLSON, BOB  
BAGLEY & MAE BAGLEY, husband and  
wife, BLAKE LYLE, Individually  
and dba GRAND TOWING, GALEN  
WOELK and CODY RUNYAN,  
Individually & dba RUNYAN &  
WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARL  
HAMBLIN, STAN NICKELL, BRET HILL  
& DEENA R. HILL, and DOES 1  
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**THIRTY FOURTH ORDER  
ON PENDING MOTIONS**

**I. INTRODUCTION**

Pending before the Court are the following motions:

1. defendants Blake Lyle, Bob Fitzgerald, Alva Harris and Scona, Inc.'s motion to reconsider and modify damages award in default judgment entered February 27, 2004, said motion being
- THIRTY FOURTH ORDER ON PENDING MOTIONS

filed on September 10, 2004;

2. defendant Galen Woelk's motion for partial summary judgment based on *res judicata*, filed on November 11, 2004;

3. plaintiff John Bach's motion to amend complaint as to defendant Galen Woelk and motion for formal pretrial conference, filed on December 6, 2004; and

4. plaintiff Bach's motion to change venue from Teton County to Bonneville County, filed several months ago.

The motion filed by defendants Lyle, Fitzgerald, Harris and Scona was not supported by any affidavits or legal memoranda, and was not scheduled for hearing. Pursuant to Rule 7(b)(3)(D), I.R.C.P., this Court has determined that 90 days has been sufficient time for these defendants to support their motion, and therefore since oral argument was not requested, the motion should be denied.

The motions filed by defendant Woelk and plaintiff Bach were noticed for hearing on December 22, 2004. Pursuant to Rule 7(b)(3)(D), I.R.C.P., this Court has determined in its discretion that oral argument on these pending motions would not be helpful. Previously, plaintiff Bach argued for a change of venue before the June, 2003 jury trial, this Court denied the change of venue, an unbiased jury was selected and there was no basis to change venue. A jury trial is scheduled to start on

February 8, 2005, and if an unbiased jury cannot be selected as determined during voir dire, this Court would again consider a change of venue. However, there is no basis to change venue at this time, so such motion must be denied.

Having considered the motion for summary judgment on *res judicata*, affidavits filed in support and in opposition, the record in this case consisting of testimony at hearings and trials, affidavits and excerpts of depositions, the legal memoranda filed by the parties, and the oral arguments of the parties or their counsel, this Court renders the following decision on the pending motions.

## **II. STANDARDS FOR DECISION**

By this reference, the Court incorporates the legal standards for determining motions for summary judgment as set forth in previous memorandum decisions in this case.

## **III. ANALYSIS**

This Court has previously concluded in its Tenth Memorandum Decision and Order that the federal action CV-01-0266-E-TGN did not address Bach's Ninth Count for conversion nor his Twelfth Count for malicious harassment. Bach's Thirteenth Count for punitive damages based on the facts alleged in the Ninth and Twelfth Counts is not really a separate count but was added after motion as permitted by I. C. §6-1604. Having considered

defendant Woelk's argument contained in his supporting legal memorandum, this Court adheres to its Tenth Memorandum Decision and Order, and concludes that the federal action is not *res judicata* to these claims. Therefore, defendant Woelk's motion for summary judgment must be denied.

This Court previously held in a motion to amend filed by plaintiff Bach as to damages caused by fire in the spring of 2003, that he would need to file a new lawsuit for such claims. To the extent Bach seeks to add such claims as against Woelk, it would serve the interest of judicial efficiency to have such claims included in Bach's other lawsuit. To the extent that Bach seeks to add more claims against Woelk, those claims can be included in another lawsuit against Woelk. Therefore, plaintiff Bach's motion to amend must be denied.

Lastly, Bach's motion for a pretrial conference must be denied. This Court previously ordered the parties to meet and agree on a stipulated final pretrial order pursuant to Rule 16(d) and (e), I.R.C.P. The counts and defenses thereto remaining for trial are not that complicated or extensive. The parties and their counsel are experienced in civil litigation and have read the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence. Due to the press of other trials, this Court

does not believe it is an efficient use of judicial resources to hold another pretrial conference in this case.

#### IV. CONCLUSION AND ORDER

Based on the foregoing analysis, this Court concludes and THEREFORE IT IS HEREBY ORDERED that:

1. defendants Blake Lyle, Bob Fitzgerald, Alva Harris and Scona, Inc.'s motion to reconsider and modify damages award in default judgment entered February 27, 2004, is DENIED;

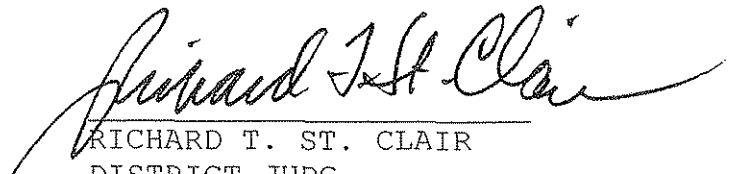
2. defendant Galen Woelk's motion for partial summary judgment based on *res judicata* is DENIED;

3. plaintiff John Bach's motion to amend complaint as to defendant Galen Woelk and motion for formal pretrial conference are DENIED; and

4. plaintiff Bach's motion to change venue from Teton County to Bonneville County is DENIED.

IT IS FURTHER ORDERED that the parties' stipulated final pretrial order shall be filed with the Clerk, and a copy lodged in Bonneville County with the undersigned district judge NOT LATER THAN January 25, 2005.

DATED this 10th day of December, 2004.

  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of December, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Telefax No. 626-441-6673 (MAIL)

John N. Bach  
P.O. Box 101  
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Alva Harris  
P. O. Box 479  
Shelley, ID 83274  
Telefax No. 208-357-3448 (MAIL)

Galen Woelk  
Runyan & Woelk, P.C.  
P.O. 533  
Driggs, ID 83422  
Telefax No. 208-354-8886 (MAIL)

Jason Scott  
P. O. Box 100  
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1054 Rammell Mountain Road  
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David Shipman  
P. O. Box 51219

Idaho Falls, ID 83405-1219

(MAIL)

Gregory Moeller

P. O. Box 250

Rexburg, ID 83440-0250

(MAIL)

RONALD LONGMORE

Clerk of Court



Deputy Court Clerk

JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Tel.: (626) 799-3146  
(Idaho Local: P.O. Box 101  
Driggs, ID. 83422  
Plaintiff PRO Se

FILED  
4:05  
JAN 12 2005  
TETON CO.  
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, et al.,

Defendants.

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S  
FURTHER AFFIDAVIT RE ISSUANCE  
OF PROPOSED PERMANENT INJUNCTION  
& REQUEST FOR JUDICIAL NOTICE  
OF ORDEES OF DISMISSAL WITH PRE-  
JUDICE of all plaintiff (JACK  
LEE McLEAN's) CLAIMS IN TETON CV  
01-33; 01-205; 01-265 & DISMISSAL  
Of Charges in Teton CP 04-526 With  
JOHN N. BACH'S 4 Motions Filed  
Dec. 27. 2004 & His Further Memo  
In Support of His Motions

STATE OF IDAHO )

ss

COUNTY OF TETON )

I, JOHN N. BACH, being placed duly under oath this 12th  
day of January, 2004, do hererby testify of my own personal  
knowledge, participation, witnessing, and obersvations as follows:

1. I previously jast before the most recent holidays faxed  
to the court with service on Alva A. Harris, counsel for those  
defendants in default per this Court's Default Judgments of Feb.  
23 and 27, 2004 and that of September 21, 2004, a proposed

PERMANENT INJUNCTION - NUNC RPO TUNC - AUGMENTING/  
SUPPLEMENTAING & EXPANDING THE PRIOR JUDGMENT OF  
OCTOBER 23, 2003; AMENDED DEFAULT JUDGMENT AGAINST  
WAYNE DAWSON OF FEBRUARY 21, 2004; DEFAULT JUDGMENT  
AGAINST ALVA HARRIS, SCONA, INC., BOB FITZGERALD, and  
BLAKE LYLE of FEBRUARY 27, 2004; and DEFAULT JUDGMENT  
AGAINST DEFENDANT JACK LEE McLEAN, deceased, ESTATE  
LYNN McLEAN, Personal Representative thereof, of  
September 21, 2004 (IRCP, Rule 65, et seq.), consisting  
of 5 pages. A further, but corrected copy of said  
proposed PERMANENT INJUNCTION is attached hereto.

2. Since affiant has not received any notice or copy of

601417



said proposed PERMANENT INJUNCTION signed or otherwise modified by the Court, he does hereby submit this Affidavit in further support and evidence for the immediate issuance thereof, per the attached corrected form, for the further reasons:

- a) In Teton CV 01-33, 01-205 and 01-265, Affiant as defendant, counterclaimant and/or cross-complainant has obtained as of January 3, 2005, three (3) separate ORDERS granting in each of said Teton Civil actions, his Motion for Dismissal with Prejudice of All Plaintiff's Claims with respect to plaintiff and/or counterdefendant therein, JACK LEE McLEAN. Also attached hereto are copies of said three (3) ORDERS OF DISMISSAL WITH PREJUDICE OF ALL of McLEAN's claims which said dismissal obliterates any claims by McLEAN's ESTATE on the Peacock, Drawknife or any other properties covered by said three Default Judgments of Feb. 21, Feb. 27, and Sept. 21, 2004. There should be no further delays in granting affiant's proposed PERMANENT INJUNCTION form as attached.
- b) In the testimony given and exhibits admitted via Affiant's testimonies in support of all said default judgments, there is not contradicted evidence that affiant has terminated all, if any there existed, joint venture relationships on the Peacock and Drawknife properties and asserted both common law and statutory setoffs against WAYNE DAWSON, McLEAN's ESTATE and Mark Liponis.
- c) At the hearings before Judge Shindirling in Teton CV 1-33, 01-205 and 01-265, Alva Harris did not show,

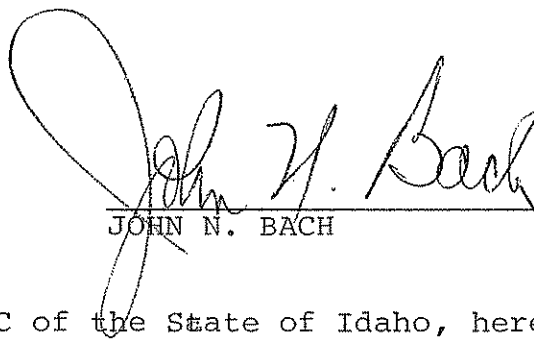
nor advised the Court on November 9, 2004 that he would not be present to represent any of the plaintiffs, nor did he file any opposition whatsoever to affiant's said motions to dismiss with prejudice. More significantly, Mr Harris; inaction and failure of having Lynn McLean, file her Oath and Acceptance as the personal representative has caused Judge Luke to close the estate petition for final appointment of her as a personal representative.

- d) The bogus and utterly perjurious criminal charges brought by Blake Lyle and Shauna Crandall in Teton CR 04-526 should by now be dismissed, and prior to the dismissal thereof, Affiant in an associate pro se role with his Court appointed attorney James Archibald filed 4 separate motions with this Court, therein assigned, Judge Richard T. St. Clair to hear the matter, which 4 motions were further supported by a FURTHER MEMORANDUM filed January 3, 2005 or thereabouts. Affiant requests this Court to take full judicial notice and receive into evidence in further support of said requested PERMAENT INJUNCTION-NUNC PRO TUNC, said 4 motions and further memo of affiant in CR 04-526.
- e) Even before the dismissal of said CR 04-526, Blake Lyle was stalking affiant and his wife, ~~at his Peacock residence,~~ and maliciously harassing and intimidating affiant and his wife in the late evening of Tuesday, January 4, 2005 and the next night one of Lyle's former employees continued said stalking, trespassing, even assaulting and further intimidating affiant and his wife, as witnesses in said CR 04-526. On Wed. and Thurs, Jan. 5 & 6th, 2005,

Rules of Civil Procedure, but intentionally partake of illegal, if not criminal actions because the orderly legal processes are too slow and not available to them, if they so sought them, especially due to the default judgments and ORDERS of this Court and Judge Shindiruling insaid 3 ORDERS OF DISMISSAL WITH PREJUDICE.

3. Further AFFIANT sayeth not.

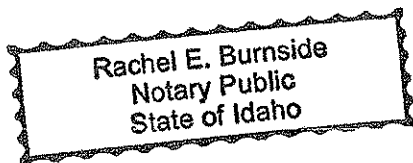
DATED: January 12, 2005

  
JOHN N. BACH

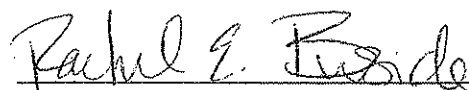
I, the undersigned NOTARY PUBLIC of the State of Idaho, hereby verify, acknowledge, affirma and attest, that on this date, JOHN N. BACH, did appear before me, personally being known to me, was placed under oath and gave the foregging written testimony, and affixed his personal signature in my presence and witness athereof,.

SWORN AND SUBSCRIBED BY ME, THIS JANUARY 12, 2004

(NOTARY SEAL)



Name of Notary



Address

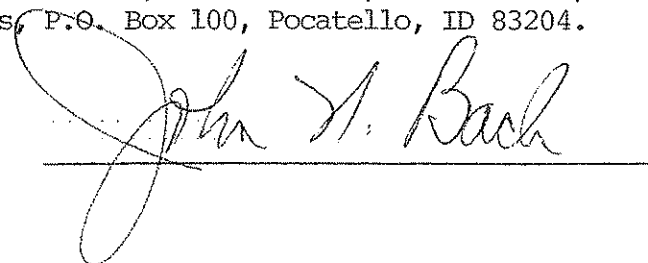
1205 100E Dugan ID 83422

Comm'n Ends

August 25, 2009

CERTIFICATE OF SERVICE BY MAIL: I the undersigned certify that on this date, January 12, 2005, I did mail copies of the foregoing document with attachments to Judge Richard T. St. Clair, C/) 605 N. Capital Ave., Idaho Falls, ID 83405; Alva Harris, P.O. Box 479, Shelley, ID 83274; Jared Harris, PO. Box 577, Blakfoot, ID 83221 and Craid Meadows, P.O. Box 100, Pocatello, ID 83204.

Janauray 12, 2005.



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, Individually  
& dba R.E.M., and CACHE RANCH,  
ALVA A. HARRIS, Individually & dba  
SCONA, Inc., a sham entity, JACK LEE  
MCLEAN, [Estate, Lynn McLean Personal  
Representative thereof], BOB FITZGERALD  
Individually & dba CACH RANCH, OLY  
OLESEN, BOB BAGLEY & MAE BAGLEY,  
husband and wife, BLAKELYLE, Individ-  
ually & dba GRANDE TOWING, and also  
GRANDE BODY & PAINT, GALEN WOELK &  
CODY RUNYAN, Individually & dba RUNYAN  
& WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARLY HAMBLIN, STAN  
NICKELL, BRET & DEENA R. HILL, DOES 1  
through 30, In lusive,

Defendants.

CASE NO CV 02-208  
PERMANENT INJUNCTION,  
NUNC PRO TUNC, -N  
AUGMENTING/SUPPLEMEN-  
TING & EXPANDING THE  
PRIOR JUDGMENTS OF:  
JUDGE OF OCTOBER 23,  
2003; AMENDED DEFAULT  
JUDGMENT AGAINST WAYNE  
DAWSON OF FEBRUARY 21, 2004;  
DEFAULT JUDGMENT AGAINST  
ALVA HARRIS, SCONA, INC.,  
BOB FITZGERALD, and  
BLAKE LYLE OF FEBRUARY  
27, 2004; and DEFAULT  
JUDGMENT AGAINST DEFEN-  
DANT JACK LEE MCLEAN,  
deceased, ESTATE, LYNN  
MCLEAN, Personally Repre-  
sentative thereof, of  
September 21, 2004 (IRCP,  
Rule 65, et seq)

The Court having heard testimonies presented by plaintiff,  
on December 5, 2003, February 3, 2004 and September 10, 2004, pre-  
sented by the plaintiff, and most recently, heard without objections  
or opposition, plaintiff's motion on November 4, 2004 for the  
issuance of a PERMANENT INJUNCTION, NUNC PRO TUNC, against the  
hereafter named individual and joint defendants, most of which def-  
endants had their defaults entered in March 2003 and defaults Judg-  
ments of February 21, 2004, February 27, 2004 and September 21,  
2004 entered against them, and other defendants such as Katherine  
Miller, Galen Woelk, Earl Hamblin, STan Nickell's Estate, Bret and  
Deena R. Hill's written disclaimers filed herein of any claims of

title, equities, possession, rights of use, enjoyment or benefits, to or in any of the real properties, quieted to plaintiff JOHN N. BACH BY THE foregoing JUDGMENTS of October 23, 2004, AMENDED DEFAULT JUDGMENT AGAINST WAYNE DAWSON of February 21, 2004, DEFAULT JUDGMENT AGAINST ALVA HARRIS, SCONA, INC., BOB FITZGERALD, and BLAKE LYLE of February 27, 2004, and the most recent DEFAULT JUDGMENT AGAINST DEFENDANT JACK LEE McLEAN, deceased, ESTATE, LYNN McLEAN Personal Representative thereof, of September 21, 2004, and this Court further having considered all exhibits offered durings said trials or hearings leading to said judgments, and the evidence as well as the equity relief requested by plaintiff justifying, necessitating and mandating the issuance of this PERMANENT INJUNCTION, NUNC PRO TUNC, AUGMENTING/SUPPLEMENTING & EXPANDING all of said JUDGMENTS as hereinafter ORDERED AND ADJUDGED; and overwhelming evidence, good cause being admitted, established and uncontradicted fact and conclusions and awards in plaintiff's favor as set forth in all of said foregoing JUDGMENTS, AMENDED JUDGMENT AND DEFAULT JUDGMENTS, and further, stated in this Court's last two ORDERS, the Court's ~~THIRTY~~ -SECOND and ~~THIRTY~~-THIRD ORDERS, and the Court's consideration of plaintiff's MEMO BRIEF filed September 10, 2004, page 15; further evidence received non-disputed, of a continuing pattern via void and improper written permission slip of May 15, 2004, that defendants LYLE and FITZGERALD, may "enter, occupy, and for whatever purpose they deem necessary build, store, landscape or cultivate the proper known as (SW $\frac{1}{4}$  of Section 6, Township 8 North, Range 4 East Boise Meridian, Teton County Idaho, 40 undivided acres more or less. On corner of Peacock Lane)." which also voidly attempts to give said defaulted defendants, who have no title, interest or claims whatsoever, along with other defendants, hereinafter stated in said

forty acres known as PEACOCK Parcel nor in any of the other parcels quieted title in the foregoing JUDGMENTS, and which permission slip further attempts to give said defendants and others acting with them to "have permission to provide access to whomsoever they wish", all of said attempted written permission documents by Paul Ehrler, Lynn McLean of British Columbia, and Manitoba, Canada, or of/by any other defendants herein are not just found by the court to be utterly void, but both a public and a private nuisances perpetrated by said defendants herein against the Plaintiff, and all such attempts, past, present or future, without any proper ORDER obtained from this Court, to violate plaintiff's quieted titles, actual possession, control, occupation and construction of home and curtailage on not just the Peacock Parcel but all other parcels heretofore quieted in him, by defendants hereinafter stated justify the issuance of this PERMANENT INJUNCTION, NUNC PRO TUNC, from and as of October 23, 2003, since plaintiff had defaults entered well prior thereto as to the defendants now hereby permanently, restrained, enjoined and forever precluded; which ~~herein stated/directed~~ defendants, are: KATHERINE D. MILLER, aka KATHERINE M. MILLER, ALVA A. HARRIS, SCONA, INC., JACK LEE McLEAN' ESTATE AND PERSONAL REPRESENTATIVE, LYNN McLEAN, BOB FITZGERALD, OLY OLESON, BLAKE LYLE, GALEN WOELK and CODY RUNYAN, Individually and dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON and any of their officers, agents, servants, employees, attorney and all other persons in active concert or participation with them, as stated in Idaho Rule of Civil Procedure, Rule 65(d), who either received actual notice of this ORDER and PERMANENT INJUNCTION NUNC PRO TUNC by personal service or otherwise, and NOW,

WHEREFORE, FOR THE FOREGOING STATED REASONS, EVIDENCE AND OR FINDINGS AND CONCLUSIONS BY THIS COURT AND IN SAID REFERENCED PRIOR JUDGMENTS WHICH ARE AUGMENT, SUPPLEMENTED AND EXPANDED HEREBY, all of said named defendants and other individuals as recited in said Rule 65(d) are hereby PERMANENTLY ENJOINED, RESTRAINED, PREVENTED AND FOREVER PRECLUDED, IN ALL MANNER AND FORMS, FROM:

A. Trespassing, entering upon, storing, placing, leaving upon, or attempting to give permission, seeking permission from each other or giving of any permission or postures to enter, trespass, violate the titles, possessions, actual use, enjoyment, home and curtailages or of all beneficial activities or economic developments of plaintiff JOHN N. BACH and his wife CINDY L. BACH, of those three (3) parcels of real properties described as:

1. The PEACOCK 40 acres: SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho, whose address assigned solely to Plaintiff JOHN N. BACH & his wife, CINDY L. BACH is 400 N, 152 E. Tetonia, Idaho via P.O. Box 101, Driggs, ID 83422; and
2. The DRAWKNIFE 33 $\frac{1}{3}$  acres: SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho, LESS a tract beginning at the SE corner of the SW $\frac{1}{4}$  of Section 35, Township 6 North, Range 45 EBM: running thence North 516 feet; thence West 295 feet; thence South 516 feet; thence East 295 feet to the point of beginning, in Teton County, Idaho.; and
3. The 8.5 more or less acres adjacent to 195 N. Hwy 33, North of Driggs, described as:  
Lot 1, Block 1, Teton Peaks View, Division 1, as per the recorded plat thereof, Teton County, Idaho. Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights appurtenant thereto, LESS, approximately 1 acre on the East side of Highway 33, North of Driggs, Idaho, with the address of 195 N. Highway 33, Driggs, Idaho, which 1 acre has no water shares of the Grand Teton Canal Com-

pany, beginning at the NW corner of Lot 1, Block 1, Teton Peaks Views, Division 1, Teton County, Idaho according to said recorded plat; running thence South 200 feet; thence East 220 feet; thence North 200 feet; then West 200 feet to the point of beginning.

- B. From recording, filing or presenting to any Teton County officials, i.e., Teton County Clerk/Recorder, Assessor, Tax Collector or any other department head any requests, permission slips, directions or suggestions to send tax assessment notices, taxes due slips/statements or any other legal notices on said parcels to any person other than to plaintiff JOHN N. BACH at his P.O. Box 101, Driggs, Idaho 83422 address or in any manner or means whatsoever, to attempt to file or have filed with or in the Teton County Planning and Zoning department records, files or other documents kept on said real properties, any claims, interests or or assertions, etc., of rights contrary to that of plaintiff JOHN N. BACH and his wife CINDY L. BACH. The foregoing TETON COUNTY OFFICIALS AND THEIR AGENTS, EMPLOYEES, are to COOPERATE FULLY IN COMPLYING WITH ALL TERMS, CONDITIONS AND ORDERS OF THIS PERMANENT INJUNCTION, NUNC PRO TUNC.
- C. From in any form or manner whatsoever, using, abusing, converting, transferring to others or themselves, or appropriating or continuing to use or violate plaintiff JOHN N. BACH's doing business as names and labels of: TARGHEE POWDER EMPORIUM, INC., UNLTD or LTD. All said DEFENDANTS shall immediately forthwith & without demand by plaintiff transfer all interest, claims, titles or uses, etc., of said dbs and business names, titles and labels, etc., to plaintiff JOHN N. BACH.
- D. ALL AND EACH OF THE AFOESAID DEFENDANTS ARE HEREBY NOTIFIED THAT ANY VIOLATION OF THE FOREGOING, SHALL BE A CRIMINAL AS WELL AS A CIVIL CONTEMPT, and a copy of this PERMANENT INJUNCTION will be delivered by plaintiff to both the TETON COUNTY SHERIFF's Office and the TETON COUNTY PROSECUTOR and COUNTY'S ATTORNEY OFFICE.

Other than as stated herein, augments, supplementing and expanding said foregoing JUDGMENTS, all other terms of said JUDGMENTS remain in full force and effect.

DATED: December \_\_\_\_, 2004

---

RICHARD T. ST. CLAIR



FILED IN CHAMBERS  
AT IDAHO FALLS  
BONNEVILLE COUNTY  
HONORABLE JON J. SHINDURLING  
DATE January 3, 2005  
TIME 2:58 pm.  
DEPUTY CLERK JR

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE McLEAN and MARK J.  
LIPONIS, Trustee,

Plaintiffs/  
Counterdefendants,

v.

JOHN N. BACH,

Defendant/  
Counterclaimant.

Case No. CV-2001-033


ORDER

ORDER

Defendant/Counterclaimant John N. Bach's Motion for the Dismissal with Prejudice of All Plaintiffs' Claims came before this Court on November 9, 2004. The Court finds that, with respect to Plaintiff Jack Lee McLean, Bach's motion should be granted. McLean died in early December 2003. Neither McLean's successors nor representatives have filed a motion for substitution. There has been no appearance by McLean's estate. The Court finds that substitution has not been made within a reasonable time. Therefore, pursuant to Idaho Rule of Civil Procedure 25(a), McLean is hereby dismissed as a plaintiff in this action.

IT IS SO ORDERED.

Dated this 3rd day of January, 2005.

  
Jon J. Shindurling  
District Judge

ORDER

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Page 1

FILED IN CLERK'S OFFICE  
AT IDAHO FALLS  
BONNEVILLE COUNTY  
HONORABLE JON J. SHINDURLING  
DATE January 3, 2005  
TIME 2:59 p.m.  
DEPUTY CLERK [Signature]

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE McLEAN,

Plaintiff,

v.

VASA N. BACH FAMILY TRUST, John  
N. Bach, Successor Trustee, and JOHN N.  
BACH,

Defendants.

Case No. CV-2001-205

ORDER

ORDER

Defendant John N. Bach's Motion for the Dismissal with Prejudice of All Plaintiffs' Claims came before this Court on November 9, 2004. The Court finds that, with respect to Plaintiff Jack Lee McLean, Bach's motion should be granted. McLean died in early December 2003. Neither McLean's successors nor representative have filed a motion for substitution. There has been no appearance by McLean's estate. The Court finds that substitution has not been made within a reasonable time. Therefore, pursuant to Idaho Rule of Civil Procedure 25(a), the above entitled action filed by McLean is hereby dismissed.

IT IS SO ORDERED.

Dated this 3<sup>rd</sup> day of January, 2005.

[Signature]  
Jon J. Shindurling  
District Judge

ORDER

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Page 1

FILED IN CHAMBERS  
AT IDAHO FALLS  
BONNEVILLE COUNTY  
HONORABLE JON J. SHINDURLING  
DATE January 3, 2005  
TIME 2:54 pm  
DEPUTY CLERK [Signature]

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE McLEAN, Trustee, and  
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST, VASA  
N. BACH FAMILY TRUST, and JOHN  
N. BACH, Individually & dba Targhee  
Powder Emporium, Ltd.

Defendant.

Case No. CV-01-265

**ORDER**

**ORDER**

Defendant/Counterclaimant John N. Bach's Motion for the Dismissal with Prejudice of All Plaintiffs' Claims came before this Court on November 9, 2004. The Court finds that, with respect to Plaintiff Jack Lee McLean, Bach's motion should be granted. McLean died in early December 2003. Neither McLean's successors nor representatives have filed a motion for substitution. There has been no appearance by McLean's estate. The Court finds that substitution has not been made within a reasonable time. Therefore, pursuant to Idaho Rule of Civil Procedure 25(a), McLean is hereby dismissed as a plaintiff in this action.

**IT IS SO ORDERED.**

Dated this 3rd day of January, 2005.

[Signature]  
Jon J. Shindurling  
District Judge

ORDER

Page 1

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JOHN N. BACH, 1958 Euclid Ave.  
San Marino, CA 91108 Tel: (208) 799-3145  
(Idaho Local: P.O. #101, Driggs, ID 83422)  
Plaintiff Pro Se

FILED

JAN 13 2005

2:53 PM  
TETON CO. MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,  
Plaintiff,  
v.  
KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, et al,  
Defendants.

CASE NO: CV 02-208  
SUPPLEMENTAL AFFIDAVIT NO. 1. TO  
PLAINTIFF'S FURTHER AFFIDAVIT RE  
ISSUANCE OF PERMANENT INJUNCTION, ETC.,  
filed Jan. 12, 2005

STATE OF IDAHO )  
COUNTY OF TETON) ss: I, JOHN N. BACH, duly placed under oath,  
give my testimony of my own personal knowledge  
participation, witnessing & observations.

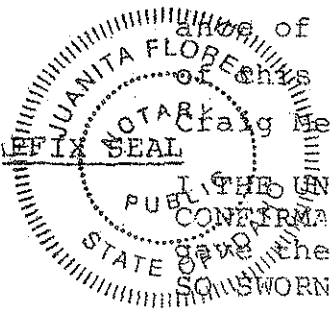
1. About 5:30 p.m. yesterday, I was advised by friends that Blake Lyle had been arrested Mon., Jan 10, 2005 on 2 felony counts of aggravated assaults against Teton officers. The 6 p.m. Channel 6 Local T.V. News further confirmed said arrest, and last evening I had further discussions with Dep. Hart of the TCSO, who advised LYLE was to be arraigned this date, at 9:30 a.m. Dep. Hurt also informed affiant that LYLE's former employee that violated affiant and his wife's property, peace and enjoyment of their Peacock residence (See par 2. e) PLAINTIFF'S FURTHER AFFIDAVIT, Jan. 12, 2005) real name was Brian Brady, who upon being stopped by the TCSO that evening, was found to possess/have a loaded 45 Glock revolver, and which he apparently had with or on him when he stalked, harassed, trespassed, etc., upon affiant and his wife, Jan. 5, 2005, a week prior.

2. Affiant attended LYLE's arraignment this morning, heard his preliminary hearing set for Mar. 25, 2005 and obtained a copy of the CRIMINAL COMPLAINT in Teton CR 05-013, a copy of which is attached.

3. Affiant is more than ever concerned about his, his wife's, animals' and other family members safety and well being by virtue of said developments and requests of this Court the immediate issuance of his submitted PERMANENT INJUNCTION form. I have mailed a copy of this document to Judge St. Clair, Alva Harris, Jared Harris, and Craig Meadows this date. DATED: Jan. 13, 2005

I, THE UNDERSIGNED NOTARY VERIFY, ATTEST AND  
CONFIRM that JOHN N. BACH was placed under OATH,  
gave the foregoing testimony and signed his name in my presence.

SWORN AND SUBSCRIBED TO BY: Name: John N. Bach Com'N Exp 2-2010



BARTON J. BIRCH  
TETON COUNTY PROSECUTOR  
89 N Main Street #10  
Driggs ID 83422  
(208) 354-2990  
ISB #6426

FILED  
JAN 10 2005  
TETON CO.  
MAGISTRATE COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON  
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

v.

BLAKE LYLE,

Defendant.

Case No. CR 05- 013

CRIMINAL COMPLAINT

PERSONALLY APPEARED before me this 10<sup>th</sup> day of January, 2005, Teton County Prosecuting Attorney, Laura E. Lowery, in and for the County of Teton, State of Idaho, who, being first duly sworn, complains and says that BLAKE LYLE did commit the crime of ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY (2 counts), as follows:

COUNT I  
ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY UPON LAW  
ENFORCEMENT PERSONAL  
Felony, I.C. §18-901; 18-909; 18-915

That the Defendant, BLAKE LYLE, on or about the 10<sup>TH</sup> day of January, 2005, in the County of Teton, State of Idaho, did intentionally, unlawfully, and with apparent ability, threaten by word to do violence upon the person of Teton County Sgt. Jared Hurt by telling Teton County Sgt. Jared Hurt that if he did not get off of his, the Defendant's, property that the Defendant would put a bullet in Teton County Sgt. Jared Hurt, which created a well-founded fear in Teton County Sgt. Jared Hurt that such violence was imminent, with the intent to commit murder.

**COUNT II**  
**ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY UPON LAW**  
**ENFORCEMENT PERSONAL**

**Felony, I.C. §18-901; 18-909; 18-915**

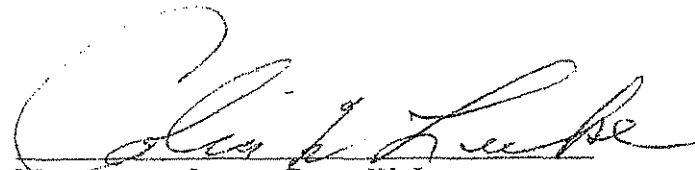
That the Defendant, BLAKE LYLE, on or about the 10<sup>TH</sup> day of January, 2005, in the County of Teton, State of Idaho, did intentionally, unlawfully, and with apparent ability, threaten by word to do violence upon the person of Teton County Animal Control Officer Robert DeLange by telling Teton County Animal Control Officer Robert DeLange that if he did not get off of his, the Defendant's, property that the Defendant would put a bullet in Teton County Animal Control Officer Robert DeLange, which created a well-founded fear in Teton County Animal Control Officer Robert DeLange that such violence was imminent, with the intent to commit murder.

All of which is contrary to the form, force and effect of the statutes made and provided for in such case and against the peace and dignity of the State of Idaho.

Dated this 10<sup>th</sup> day of January, 2005.

  
Barton J. Birch  
TETON COUNTY PROSECUTOR

SWORN AND SUBSCRIBED TO before me on the date indicated.

  
MAGISTRATE JUDGE COLIN W. LUKE

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

JAN 13 2005  
11:33 AM  
TETON CO. MAGISTRATE COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	
vs.	)	AMENDED ANSWER AND
	)	DEMAND FOR JURY TRIAL
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	
	)	

In answer to Plaintiff John N. Bach's First Amended Complaint filed on September 27, 2002, as amended, Defendant Galen Woelk, individually & dba Runyan & Woelk, admits, denies, and avers as follows:

1. Woelk admits that Bach lives in Teton County, Idaho. Woelk is without knowledge or information sufficient either to admit or deny the remaining allegations of Paragraph 1 of the First Amended Complaint and therefore denies them.
2. Woelk admits that at the times relevant to the allegations against him he lived in Driggs, Idaho, and practiced law with Cody Runyan. Woelk denies having been involved in any capacity in any conspiracy to harm Bach or Bach's properties or interests. Woelk is without

knowledge or information sufficient either to admit or deny the remaining allegations of Paragraph 2 of the First Amended Complaint and therefore denies them.

3. The First Amended Complaint does not contain any paragraph numbered "3."

4. Woelk denies the allegations of Paragraph 4 of the First Amended Complaint.

5. The First Amended Complaint contains two paragraphs numbered "5." Woelk denies the allegations of both of them.

6. Woelk denies the allegations of Paragraph 6 of the First Amended Complaint.

7. Woelk denies the allegations of Paragraph 7 of the First Amended Complaint.

8. Woelk admits having represented persons in connection with criminal complaints initiated by Bach. Woelk denies the remaining allegations of Paragraph 8 of the First Amended Complaint.

9. Woelk is without knowledge or information sufficient either to admit or deny the allegations of Paragraph 9 of the First Amended Complaint and therefore denies them.

10. Woelk is without knowledge or information sufficient either to admit or deny the allegations of Paragraph 10 of the First Amended Complaint and therefore denies them.

11. Woelk is without knowledge or information sufficient either to admit or deny the allegations of Paragraph 11 of the First Amended Complaint and therefore denies them.

12. Woelk is without knowledge or information sufficient either to admit or deny the allegations of Paragraph 12 of the First Amended Complaint and therefore denies them.

13. Woelk is without knowledge or information sufficient either to admit or deny the allegations of Paragraph 13 of the First Amended Complaint and therefore denies them.

14. Woelk denies the allegations of Paragraph 14 of the First Amended Complaint.

15. Insofar as Paragraphs 15 through 46 (except those paragraphs included in Bach's Seventh Count, Tenth Count, and Eleventh Counts, to which no response is required because

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some of those counts are not asserted against Woelk and because the Court dismissed some of them in its Tenth Order on Pending Motions) of the First Amended Complaint, as amended, make any direct or indirect allegations against Woelk, Woelk denies those allegations. Woelk is without knowledge or information sufficient either to admit or deny the remaining allegations of those paragraphs and therefore denies them.

16. Woelk denies every allegation of the First Amended Complaint, as amended, not specifically admitted herein.

#### **FIRST DEFENSE**

Bach's complaint fails to state a claim on which relief can be granted.

#### **SECOND DEFENSE**

Bach's claims are barred by the doctrines of res judicata and collateral estoppel.

#### **THIRD DEFENSE**

Bach's damages, if any, were the consequence of and/or proximate result of his own actions. Further, to the extent Bach has made any claim against Woelk that constitutes a claim subject to the rule of comparative negligence, Bach's negligence is the sole negligent cause of his damages, if any, or is equal to or greater than the negligence, if any, of Woelk. Therefore, Bach is barred from recovering any damages from Woelk.

#### **FOURTH DEFENSE**

Bach's damages, if any, were caused by the acts or omissions of third parties, over whom Woelk had no right of direction or control.

#### **FIFTH DEFENSE**

Bach's claims are barred for the reason that the actions of which he complains, allegedly committed by Woelk, are privileged actions under the law and Woelk is immune from liability for such actions.

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#### **SIXTH DEFENSE**

Bach's claims are barred by applicable statutes of limitation, to include, but not necessarily be limited to, Idaho Code §§ 5-218, 5-219, and 5-224.

#### **SEVENTH DEFENSE**

Bach's claims are barred by principles of equity, to include, but not be limited to, estoppel, waiver, unclean hands and laches.

#### **EIGHTH DEFENSE**

Bach's claims are barred for the reason that his claims are based in whole, or in part, upon his own fraudulent conduct.

#### **NINTH DEFENSE**

Bach's claims are barred for the reason of illegality.

#### **TENTH DEFENSE**

Bach's claims are barred based on the Court's ruling that he never had any attorney-client relationship with Woelk and never shared any confidential information with Woelk.

#### **ELEVENTH DEFENSE**

Bach owes Woelk money pursuant to a federal court judgment. Any judgment received by Bach in this case must be reduced by the amount Bach owes Woelk pursuant to the federal court judgment.

#### **DEMAND FOR RELIEF**

WHEREFORE, having answered Bach's First Amended Complaint, as amended, Woelk demands judgment against Bach as follows:

1. That Bach's First Amended Complaint, as amended, be dismissed with prejudice;
2. That Woelk be awarded his costs and attorney fees incurred in defending Bach's claims pursuant to Idaho Code § 12-121 and/or other applicable law; and
3. That Woelk be awarded such further relief as may be just and proper.

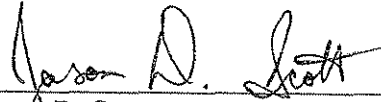
**DEMAND FOR JURY TRIAL**

Woelk demands a trial by jury pursuant to I.R.C.P. 38(b).

DATED THIS 6<sup>th</sup> day of January, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Jason D. Scott

Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of January, 2005, I caused to be served a true copy of the foregoing AMENDED ANSWER AND DEMAND FOR JURY TRIAL by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

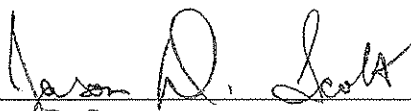
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
\_\_\_\_\_  
Jason D. Scott

001438

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

FILED  
JAN 20 2005  
TETON CO.  
MAGISTRATE COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	EXHIBIT LIST
vs.	)	
	)	
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

Pursuant to section II(2) of the Order and Notice Setting Jury Trial entered by the Court on November 27, 2002, Defendant Galen Woelk, individually & dba Runyan & Woelk, submits this list of the exhibits he may offer into evidence at trial:

**Exhibits from this Case Itself**

- A. Complaint filed on July 23, 2002
- B. Entry of Appearance filed on August 16, 2002
- C. Motion for More Definite Statement, I.R.C.P. 12(e) filed on August 19, 2002
- D. Order on Pending Motions entered on September 3, 2002
- E. Plaintiff John N. Bach's Notice of Motion and Motion for an Order Disqualifying-Recusing Galen Woelk filed on September 4, 2002

- F. First Amended Complaint filed on September 27, 2002
- G. Third Order on Pending Motions entered on October 15, 2002
- H. Plaintiff John N. Bach's Objections, Responses and Answers to Defendant Galen Woelk's First Set of Discovery Requests to Plaintiff dated November 25, 2003
- I. Plaintiff John N. Bach Supplemental Answers Per Court's Order of March 19, 2004 dated April 2, 2004
- J. Defendant Galen Woelk's Second Set of Discovery Requests to Plaintiff
- K. [Reserved for any response served by Plaintiff to Woelk's Second Set of Discovery Requests]
- L. [Reserved for any order entered by the Court on Woelk's Motion to Compel answers to Defendant Galen Woelk's Second Set of Discovery Requests to Plaintiff]

**Exhibits Related to Bach's Federal Case Against Woelk**

- M. Complaint filed on June 11, 2001
- N. Amended Complaint filed on April 8, 2002
- O. Memorandum Decision and Order entered on June 25, 2002
- P. Order entered on December 16, 2002
- Q. Judgment entered on October 21, 2004
- R. Order entered on December 27, 2004
- S. Judgment entered on December 27, 2004

**Exhibits Related to the Woelk's Initial Representation of Kathy Miller**

- T. July 10, 2000 letter from Plaintiff to Katherine D. Miller
- U. July 12, 2000 letter from Woelk to Plaintiff
- V. August 2, 2000 letter from Cody Runyan to Plaintiff
- W. August 3, 2000 letter from Plaintiff to Runyan & Woelk

**Exhibits Related to the McLean Criminal Case**

- X. November 16, 2000 police report by Plaintiff
- Y. Complaint filed on November 17, 2000

- Z. November 22, 2000 letter from Woelk to Laura Lowery
- AA. November 22, 2000 letter from Plaintiff to Jack McLean
- BB. November 28, 2000 letter from Plaintiff to Mark Liponis
- CC. November 29, 2000 letter to Plaintiff from Mark Liponis
- DD. November 30, 2000 letter from Woelk to Laura Lowery
- EE. December 11, 2000 sheriff's report
- FF. December 11, 2000 letter from Plaintiff to Laura Lowery
- GG. January 9, 2001 Notice and Demand for Accounting
- HH. January 22, 2001 letter from Alva Harris to Plaintiff
- II. January 24, 2001 letter from Plaintiff to Alva Harris
- JJ. Motion for Return of Property filed on March 15, 2001
- KK. Amended Motion for Return of Property dated March 16, 2001
- LL. State's Affidavit in Support of Brief in Opposition to the Defendant's Motion to Dismiss and in Support of State's Motion to Return Property filed on March 20, 2001
- MM. Defendant's Response to the State's Amended Motion for Return of Property filed on March 21, 2001
- NN. John N. Bach's Response to Plaintiff State of Idaho's Motion for Return of Property—\$15,000 filed on March 23, 2001
- OO. Affidavit of John N. Bach in Response to State of Idaho's Amended Motion for Return of Property—His \$15,000.00 filed on March 23, 2001
- PP. Defendant's Supplemental Response to the State's Amended Motion for Return of Property filed on March 27, 2001
- QQ. March 28, 2001 letter from Kenneth Stringfield
- RR. Order entered on April 2, 2001
- SS. Motion to Dismiss filed on April 26, 2001
- TT. Order to Dismiss entered on May 2, 2001

### **Exhibits Related to McLean v. Bachovich**

- UU. Complaint filed on February 14, 2001
- VV. [Reserved for Petition/Motion in Interpleader filed on August 3, 2001]
- WW. [Reserved for any order or minute entry approving interpleader of the \$15,000]
- XX. Defendant John N. Bach's Renotice of Motion for Immediate Release/Return to Him of \$15,000.00 Plus Interest filed on September 3, 2002
- YY. Response to Motion to Release Funds filed on October 2, 2002
- ZZ. Opinion and Decision on Defendant's Motion for Release of Funds entered on November 1, 2002
- AAA. Order entered on November 1, 2002
- BBB. Defendant and Counterclaimant John N. Bach's Notice of Motions & Motions...for the Immediate Release, Payment and Delivery to Defendant John N. Bach of the \$15,000.00 Stolen from Him/His Account by Jack Lee McLean, Mark Liponis, Alva Harris & Scona, Inc., etc. filed on October 25, 2004
- CCC. Order Commanding/Directing Teton County Clerk, Sheriff & County Prosecutor to Immediately Release/Pay to John N. Bach, the Entire Fifteen Thousand Dollars (\$15,000.00) Plus All Accrued Interest filed on November 9, 2004
- DDD. Affidavit of Laura Lowery filed on November 12, 2004
- EEE. ROA Report dated January 4, 2005

### **"Jovan" Exhibits**

- FFF. October 5, 1994 letter from Plaintiff to Mark Liponis
- GGG. Targhee Powder Emporium announcement
- HHH. Targhee Powder Emporium business card
- III. Photographs with handwriting referring to "Jovan"
- JJJ. Nikola Bacevic

### **Bach's Supreme Court Candidacy**

- KKK. Verified Complaint for Declaratory Relief and Injunctive Relief filed on April 26, 2004

### **Bach's Bankruptcy Records**

- LLL. Schedules from Plaintiff's Idaho bankruptcy case



MMM. Schedules from Plaintiff's California bankruptcy case

**Bach's Bar Records**

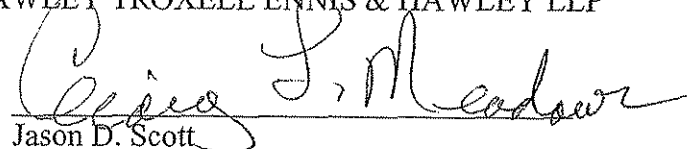
NNN. Plaintiff's California bar disciplinary records

In addition, Woelk may use all exhibits used by any party at the first trial of this action,  
and all exhibits listed by any other party with respect to this trial.

DATED THIS 18<sup>th</sup> day of January, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Jason D. Scott

Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

001143

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of January, 2005, I caused to be served a true copy of the foregoing EXHIBIT LIST by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
Jason D. Scott

FILED

JAN 21 2005

TIME: 9:33 am *in*  
SEVENTH JUDICIAL DISTRICT COURT

JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
(Idaho Local: P.O. Box 101  
Driggs, ID 83422)  
Tel: (626) 799-3146  
Plaintiff Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S  
EXHIBIT LIST FOR JURY TRIAL  
OF FEBRUARY 8, 2005

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, et al.,

Defendants.

Plaintiff JOHN N. BACH, submits this list of exhibits he may offer into evidence at trial, before the jury and the court, on issues to be tried, February 8, 2005:

- A. All of Plaintiff's EXHIBITS admitted into evidence during the jury trial had in this matter on June 9, 2003. (These are already in Defendant Woelk's possession)
- B. The Idaho Attorney General Casette tapes recordings of the interviews and statements obtained by Kenneth Stringfield, Deputy Attorney General of Idaho, of:
  - 1. Jack McLean with directions/comments by Woelk
  - 2. Alva Harris
  - 3. Katherine Miller, with directions/comments by Woelk
- C. Affidavit of JOHN N. BACH, of February 3, 2004 admitted into evidence herein on that date, already in Woelk's and his attorney's possession.
- D. Statement from Sanford I. Beck of interest amounts due from

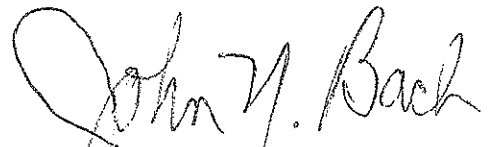
plaintiff due Beck on \$15,000.00 loan

- E. Doctors', hospital and other medical services, prescriptions and diabetic aids, tests materials, etc., incurred and still necessary/to be incurred in the future.
- F. Any other exhibits denominated/listed or referenced by defendant Woelk, and his attorneys or by Woelk as counsel for a number of defendants herein, per all previously filed and current EXHIBIT LISTS presented/filed herein.
- G. Documents produced by defendant Woelk, in partial response to plaintiff's discovery requests.
- H. Plaintiff's objections, responses and answers to defendant Woelk's discovery requests/sets, etc, with all supplements.
- I. Default Judgements obtained by plaintiff herein, from December 5, 2003 through September 21, 2004, along with
  - 1. Preliminary Injunction
  - 2. Permanent Injunctions
  - 3. Thirty-First through Thirty Fourth Orders, certain portions thereof.

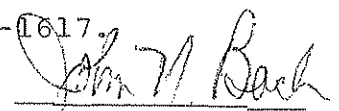
NOTE: With the exception of categories D. and E, supra, all of said/such exhibits are both in defendant Woelk's possession and also further again in his attorneys' possession, not only due to their being attorneys of record herein but also, in U.S.D.C., Idaho CV 01-266-E-TGN.

Plaintiff will further refine and define the foregoing exhibits upon receipt and evaluation of the defendant Woelk's proposed EXHIBIT LIST for the forthcoming trial.

DATED: January 20, 2005,

  
Plaintiff Pro Se

I hereby certify that on this date, a copy of the foregoing document was mailed to Craig Meadows, P.O. Box 1617, Boise, ID 83701-1617.



PLT'S EX I.A. 12.

Ronald E. Bush, ISB No. 3066  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
333 South Main Street  
P.O. Box 100  
Pocatello, ID 83204-0100  
Telephone: (208) 233-0845  
Facsimile: (208) 233-1304  
E-mail: REB@hteh.com

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	EXHIBIT LIST
vs.	)	
	)	
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

Pursuant to section II(2) of the Order and Notice Setting Jury Trial entered by the Court on November 27, 2002, Defendant Galen Woelk, individually & dba Runyan & Woelk, submits this list of the exhibits he may offer into evidence at trial:

1. November 3, 2000 letter from Woelk to Laura Lowery
2. November 16, 2000 letter from Woelk to Laura Lowery
3. Affidavit of Alva Harris dated November 17, 2000
4. Memorandum Decision dated December 28, 2000
5. Motion to Dismiss and Memorandum in Support of Motion to Dismiss dated December 20, 2000

6. Photos of Miller property dated October 27, 2000, October 4, 2000, November 8, 2000, and September 22, 2000
7. Motion to Dismiss dated December 13, 2000
8. August 2, 2000 letter from Cody Runyan to Plaintiff
9. August 3, 2000 letter from Plaintiff to Runyan & Woelk
10. September 18, 2000 letter from Laura Lowery to Runyan & Woelk
11. July 12, 2000 letter from Woelk to Plaintiff
12. July 10, 2000 letter from Plaintiff to Miller
13. Verified Complaint dated May 19, 2000
14. May 2, 2001 order to dismiss
15. November 17, 2000 criminal complaint
16. January 31, 2000 memorandum in support of motion to dismiss
17. March 23, 2001 order denying motion to dismiss
18. January 22, 2001 order denying motion to dismiss
19. April 20, 2001 motion to dismiss
20. April 2, 2001 order
21. September 22, 2000 letter from Bach to Laura Lowery
22. January 30, 2001 criminal information
23. Verified Complaint dated February 9, 2001
24. March 28, 2001 letter from Kenneth Stringfield
25. November 28, 2000 letter from Plaintiff to Mark Liponis
26. November 29, 2000 letter to Plaintiff from Mark Liponis
27. November 30, 2000 letter from Woelk to Laura Lowery
28. November 22, 2000 letter from Woelk to Laura Lowery
29. November 22, 2000 letter from Plaintiff to Jack McLean
30. November 30, 1997 letter from Plaintiff to Jack McLean

31. Signature card for Liponis Emporium trust account
32. Joint Venture Agreement dated July 7, 1994
33. December 11, 2000 letter from Plaintiff to Laura Lowery
34. All exhibits listed or utilized at trial by any other party to this action

DATED THIS 27<sup>th</sup> day of May, 2003.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott  
Jason D. Scott

Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

13. AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO WOELK'S INITIAL MOTION FOR SUMMARY JUDGMENT.
14. AFFIDAVIT OF PLAINTIFF IN OPPOSITION TO WOELK'S 2nd MOTION for S/J
15. Woelk's Initial Responses to Plaintiff's Discovery Requests.
16. Woelk's Subsequent and Supplemental Responses to Discovery Requests by Plaintiff. (This complete EXHIBIT A-16 is Reserved to include whatever further subsequent and/or supplemental responses Woelk makes and serves per the STIPULATED PRETRIAL ORDER, on Friday, Jan. 28, 2005.)
17. PLAINTIFF JOHN N. BACH's SUPPLEMENTAL ANSWERS, AMENDED PER COURT'S ORDER of March 19, 2004, dated April 2, 2004.
18. Plaintiff JOHN N. BACH's Objections, Response and Answers to Dft Woelk's 1st Srt of Discovery, etc., dated Nov. 25, 2003.
19. Plaintiff's Further SUPPLEMENTAL ANSWERS TO WOELK's DISCOVERY REQUESTS, per STIPULATED PRETRIAL ORDER herein (This complete EXHIBIT A-19 is reserved until Plaintiff mails the same to Deft Woelk's Counsel on Friday, Jan. 28, 2005, which will include Plaintiff's further damages, especially medical costs, expenses incurred for the personal injuries Woelk's tortious conduct inflicted upon Plaintiff along with other damages, of Plaintiff's sustained after June 9, 2003 and copies of Doctors' records, which are still being obtained)
20. AFFIDAVIT OF JOHN N. BACH, of February 3, 2004 filed that same date and received into evidence in support of his requested default judgments along with
  - (1) AMENDED DEFAULT JUDGMENT AGAINST WAYNE DAWSON, of
  - (2) DEFAULT JUDGMENT AGAINST HARRIS, SCONA, INC., FITZGERALD, OLESON, LYLE, ETC., of FEBRUARY 27, 2004
  - (3) DEFAULT JUDGMENT AGAINST JACK McLEAN's ESTATE, PERSONAL REPRESENTATIVE, etc., of Sept. 21, 2004.
  - (4) Permanent Injunction Against Defendants HILL
  - (5) [Requested] PERMANENT INJUNCTION AGAINST ALL DEFENDANTS IN DEFAULT, etc. (This PERMANENT INJUNCTION is still before Judge St. Clair for his signature and issuance and upon said being filed it will be this EXHIBIT A-20.(5)



II. EXHIBITS OUTSIDE OF THIS CASE, MAINLY OF TAPED

INTERVIEWS BY IDAHO ATTORNEY GENERAL'S OFFICE OBTAINED BY FREEDOM OF INFORMATION ACT, ADDITIONAL COPIES OF WHICH HAVE RECENTLY BEEN DISCOVERED & OF ORDERS IN TETON CV 01-33, 01-205 and 01-265.

- A. TAPE 1 of INTERVIEW OF JACK McLEAN, 3/ /01
- B. TAPE 2 of INTERVIEW OF JACK McLEAN, 3/6/01
- C. TAPE OF INTERVIEW OF ALVA HARRIS, (already in evidence, the only copy and Plaintiff has not been able to get the Court Clerk in Teton County to make a duplicate copy so far, but Plaintiff will keep trying and insert such copy with a copy mailed to Deft Woelk's counsel)
- D. TAPE 1, of INTERVIEW OF KATHY MILLER. 3/2/01
- E. TAPE 2, of INTERVIEW OF KATHY MILLER, 3/7/01
- F. ORDER of November 9, 2004 in Teton CV 01-33 signed by Judge Jon Shindirling.
- G. ORDER of DISMISSAL WITH PREJUDICE OF McLEAN's claims in Teton CV 01-33, Jan. 3, 2005
- H. ORDER OF DISMISSAL WITH PREJUDICE OF McLEAN's claims in TETON CV 01-205, Jan. 3, 2005
- I. ORDER OF DISMISSAL WITH PREJUDICE OF McLEAN's claims in Teton CV 01-265, Jan 3, 2005
- J. Plaintiff/Petitioner JOHN N. BACH's VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF. ETC., filed April 26, 2004 in U.S.D.C.. Idaho. CV 04-205-S- BLW (A copy of this EXHIBIT is Dft Woelk's marked Exhibit KKK)

Because of the difficulties of Plaintiff getting copies made of the fore designated taped interviews of Jack McLean and Kathy Miller. so as they will be in today's mail to Woelk's counsel, he may not be able to get copies of all other exhibits in today's mail to Woelk's counsel, but he will have the same mailed no later than Friday, Jan. 28, 2005 DATED: Jan. 26, 2005

CERTIFICATE OF SERVICE BY MAIL, I hereby certify that on JOHN N. BACH this date, Jan. 26, 2005 I did mail a copy of this document to Craig Meadows & Judge St. Clair.

TWO (2) INTERVIEW TAPES OF JACK MCLEAN (with  
Galen Woelk present and interjecting  
and leading Mclean into his answers.

TWO (2) INTERVIEW TAPES OF KATHY MILLER (with  
Galen Woelk's interruptions and inter-  
jections of suggestions, opinions and  
speculations, etc.)

001452

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

FILED

JAN 27 2005  
TIME 4:15 PM  
JAN 27 2005

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	ADDENDUM TO STIPULATED
vs.	)	PRETRIAL ORDER
	)	
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

Plaintiff John N. Bach and counsel for Defendant Galen Woelk, individually & dba Runyan & Woelk, met personally on January 18, 2005, and by telephone on January 24, 2005, in an attempt to stipulate to the entry of a pretrial order as required in the Court's Thirty Fourth Order on Pending Motions. Unfortunately, because the parties' views as to the issues that remain for trial are widely divergent, they were unable to arrive at a comprehensive stipulated pretrial order. They did, however, execute a document entitled "Parties Stipulated Pretrial Order for Trial of February 8, 20005 [sic] etc." (the "Stipulated Pretrial Order"), which sets forth the matters as to which the parties were able to agree, as well as some of Bach's positions with which Woelk does not agree.

001453

ORIGINAL

Pursuant to paragraph I of the Stipulated Pretrial Order, Woelk provides this Addendum to Stipulated Pretrial Order to present Woelk's views on the matters as to which the parties were unable to reach agreement.

1. Claims Remaining for Trial. Woelk disputes most of Bach's recitation in paragraph IV of the Stipulated Pretrial Order of the claims remaining for trial. Woelk contends that Bach's sole remaining claims against Woelk are for conversion, malicious harassment, and punitive damages. Further, based on summary-judgment rulings issued by the Court, the conversion claim is limited to seeking damages for Woelk's alleged temporary deprivation of Bach's right to use \$15,000 that was on deposit with the Clerk of Court in *Jack Lee McLean, et al. v. Jovan N. Bachovich aka John N. Bach*, Case No. CV-01-033 in Teton County, but since has been paid out to Bach, with interest. Also, contrary to Bach's position, the claim for malicious harassment is asserted only under the Idaho statute and not under the constitution. That claim alleges that Woelk has inflicted or threatened to inflict personal injury or property damage upon Bach based on Woelk's alleged prejudice against persons of Montenegrin ancestry. Pursuant to I.R.C.P. 15(d), each of these claims is limited to alleged acts of Woelk that occurred prior to the filing of the amended complaint in this action on September 27, 2002. No other claims against Woelk or any other party remain for trial.

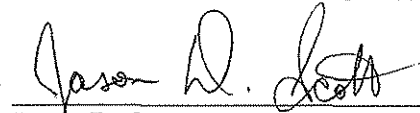
2. Peremptory Challenges. In paragraph V of the Stipulated Pretrial Order, Bach takes the position that each party should have 10 peremptory challenges plus two additional peremptory challenges for alternate jurors. Woelk believes that the parties should be limited to the number of peremptory challenges permitted in I.R.C.P. 47(j). Allowing additional peremptory challenges would make selecting a jury more difficult and time-consuming, and it would undermine rather than promote a fair trial of this action by giving the parties too much opportunity to shape the jury.

3. Length of Trial. Paragraph V of the Stipulated Pretrial Order states that trial is expected to last at least five full trial days. Woelk requests that the trial be limited to five full trial days, consisting of one day to select the jury and to resolve all pending motions, two days for Bach's case-in-chief and any rebuttal case, and two days for Woelk's case-in-chief and any surrebuttal case.

DATED THIS 25th day of January, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



Jason D. Scott

Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

001455

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of January, 2005, I caused to be served a true copy of the foregoing ADDENDUM TO STIPULATED PRETRIAL ORDER by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

☒ U.S. Mail, Postage Prepaid  
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Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

☒ U.S. Mail, Postage Prepaid  
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Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452


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☐ Overnight Mail  
☐ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
\_\_\_\_\_  
Jason D. Scott

001456

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

FILED

FEB 01 2005  
TIME: 12:58  
TETON CO. MAGISTRATE COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER, aka KATHERINE  
M. MILLER, Individually and dba R.E.M., et  
al.,

Defendants.

Case No. CV-02-0208

AMENDED EXHIBIT LIST

Pursuant to section II(2) of the Order and Notice Setting Jury Trial entered by the Court on November 27, 2002, Defendant Galen Woelk, individually & dba Runyan & Woelk, submits this list of the exhibits he may offer into evidence at trial:

**Exhibits from this Case Itself**

- A. Complaint filed on July 23, 2002
- B. Entry of Appearance filed on August 16, 2002
- C. Motion for More Definite Statement, I.R.C.P. 12(e) filed on August 19, 2002
- D. Order on Pending Motions entered on September 3, 2002
- E. Plaintiff John N. Bach's Notice of Motion and Motion for an Order Disqualifying-Recusing Galen Woelk filed on September 4, 2002

- F. First Amended Complaint filed on September 27, 2002
- G. Third Order on Pending Motions entered on October 15, 2002
- H. Plaintiff John N. Bach's Objections, Responses and Answers to Defendant Galen Woelk's First Set of Discovery Requests to Plaintiff dated November 25, 2003
- I. Plaintiff John N. Bach Supplemental Answers Per Court's Order of March 19, 2004 dated April 2, 2004
- J. Defendant Galen Woelk's Second Set of Discovery Requests to Plaintiff
- K. [Reserved for any response served by Plaintiff to Woelk's Second Set of Discovery Requests]
- L. [Reserved for any order entered by the Court on Woelk's Motion to Compel answers to Defendant Galen Woelk's Second Set of Discovery Requests to Plaintiff]

**Exhibits Related to Bach's Federal Case Against Woelk**

- M. Complaint filed on June 11, 2001
- N. Amended Complaint filed on April 8, 2002
- O. Memorandum Decision and Order entered on June 25, 2002
- P. Order entered on December 16, 2002
- Q. Judgment entered on October 21, 2004
- R. Order entered on December 27, 2004
- S. Judgment entered on December 27, 2004

**Exhibits Related to the Woelk's Initial Representation of Kathy Miller**

- T. July 10, 2000 letter from Plaintiff to Katherine D. Miller
- U. July 12, 2000 letter from Woelk to Plaintiff
- V. August 2, 2000 letter from Cody Runyan to Plaintiff
- W. August 3, 2000 letter from Plaintiff to Runyan & Woelk

**Exhibits Related to the McLean Criminal Case**

- X. November 16, 2000 police report by Plaintiff
- Y. Complaint filed on November 17, 2000



- Z. November 22, 2000 letter from Woelk to Laura Lowery
- AA. November 22, 2000 letter from Plaintiff to Jack McLean
- BB. November 28, 2000 letter from Plaintiff to Mark Liponis
- CC. November 29, 2000 letter to Plaintiff from Mark Liponis
- DD. November 30, 2000 letter from Woelk to Laura Lowery
- EE. December 11, 2000 sheriff's report
- FF. December 11, 2000 letter from Plaintiff to Laura Lowery
- GG. January 9, 2001 Notice and Demand for Accounting
- HH. January 22, 2001 letter from Alva Harris to Plaintiff
- II. January 24, 2001 letter from Plaintiff to Alva Harris
- JJ. Motion for Return of Property filed on March 15, 2001
- KK. Amended Motion for Return of Property dated March 16, 2001
- LL. State's Affidavit in Support of Brief in Opposition to the Defendant's Motion to Dismiss and in Support of State's Motion to Return Property filed on March 20, 2001
- MM. Defendant's Response to the State's Amended Motion for Return of Property filed on March 21, 2001
- NN. John N. Bach's Response to Plaintiff State of Idaho's Motion for Return of Property—\$15,000 filed on March 23, 2001
- OO. Affidavit of John N. Bach in Response to State of Idaho's Amended Motion for Return of Property—His \$15,000.00 filed on March 23, 2001
- PP. Defendant's Supplemental Response to the State's Amended Motion for Return of Property filed on March 27, 2001
- QQ. March 28, 2001 letter from Kenneth Stringfield
- RR. Order entered on April 2, 2001
- SS. Motion to Dismiss filed on April 26, 2001
- TT. Order to Dismiss entered on May 2, 2001

### **Exhibits Related to McLean v. Bachovich**

- UU. Complaint filed on February 14, 2001
- VV. [Reserved for Petition/Motion in Interpleader filed on August 3, 2001]
- WW. [Reserved for any order or minute entry approving interpleader of the \$15,000]
- XX. Defendant John N. Bach's Renotice of Motion for Immediate Release/Return to Him of \$15,000.00 Plus Interest filed on September 3, 2002
- YY. Response to Motion to Release Funds filed on October 2, 2002
- ZZ. Opinion and Decision on Defendant's Motion for Release of Funds entered on November 1, 2002
- AAA. Order entered on November 1, 2002
- BBB. Defendant and Counterclaimant John N. Bach's Notice of Motions & Motions...for the Immediate Release, Payment and Delivery to Defendant John N. Bach of the \$15,000.00 Stolen from Him/His Account by Jack Lee McLean, Mark Liponis, Alva Harris & Scona, Inc., etc. filed on October 25, 2004
- CCC. Order Commanding/Directing Teton County Clerk, Sheriff & County Prosecutor to Immediately Release/Pay to John N. Bach, the Entire Fifteen Thousand Dollars (\$15,000.00) Plus All Accrued Interest filed on November 9, 2004
- DDD. Affidavit of Laura Lowery filed on November 12, 2004
- EEE. ROA Report dated January 4, 2005

### **"Jovan" Exhibits**

- FFF. October 5, 1994 letter from Plaintiff to Mark Liponis
- GGG. Targhee Powder Emporium announcement
- HHH. Targhee Powder Emporium business card
- III. Photographs with handwriting referring to "Jovan"
- JJJ. Nikola Bacevic

### **Bach's Supreme Court Candidacy**

- KKK. Verified Complaint for Declaratory Relief and Injunctive Relief filed on April 26, 2004

### **Bach's Bankruptcy Records**

- LLL. Schedules from Plaintiff's Idaho bankruptcy case

MMM. Schedules from Plaintiff's California bankruptcy case

**Bach's Bar Records**

NNN. Plaintiff's California bar disciplinary records

**Other Exhibits**

OOO. Special Verdict entered on June 19, 2003

PPP. Findings of Fact and Conclusions of Law entered on July 1, 2003

In addition, Woelk may use all exhibits used by any party at the first trial of this action, and all exhibits listed by any other party with respect to this trial.

DATED THIS 26<sup>th</sup> day of January, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott

Jason D. Scott  
Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of January, 2005, I caused to be served a true copy of the foregoing AMENDED EXHIBIT LIST by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452


☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
\_\_\_\_\_  
Jason D. Scott

# In the Supreme Court of the State of Idaho

FILED  
4:33  
FEB 02 2005  
TETON CO.  
MAGISTRATE COURT

JOHN N. BACH,

Plaintiff-Counterdefendant-Appellant,

v.

KATHERINE D. MILLER, aka KATHERINE  
M. MILLER, dba R.E.M. and CACHE RANCH,  
et al.,

Defendants-Counterclaimants-  
Respondents,

and

ALVA A. HARRIS, individually and dba )  
SCONA, INC., JACK LEE MC LEAN, BOB )  
FITZGERALD, individually and dba CACHE )  
RANCH, OLY OLESEN, BOB BAGLEY, MAE )  
BAGLEY, BLAKE LYLE, individually and dba )  
GRAND TOWING, and also GRANDE BODY )  
& PAINT, GALEN WOELK & CODY )  
RUNYAN, individually and dba RUNYAN & )  
WOELK, ANN-TOY BROUGHTON, )  
WAYNE DAWSON, MARK LIPONIS, EARL )  
HAMBLIN, STAN NICKELL, BERT & )  
DEENA HILL and DOES 1 through 30, )

Defendants-Respondents.

REMITTITUR

NO. 30294

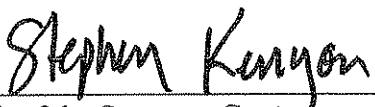
TO: SEVENTH JUDICIAL DISTRICT, COUNTY OF TETON.

The Court having entered an Order dismissing this appeal on December 29, 2004;  
therefore,

IT IS HEREBY ORDERED that the appeal herein from the judgment of the  
District Court be, and hereby is dismissed.

004463

DATED this 20th day of January 2005.

  
Clerk of the Supreme Court

STATE OF IDAHO

cc: Counsel of Record  
District Court Clerk  
District Judge

001464

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

FILED  
11:36  
FEB 07 2005  
TETON CO.  
MAGISTRATE COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	AFFIDAVIT OF GALEN WOELK
vs.	)	
	)	
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

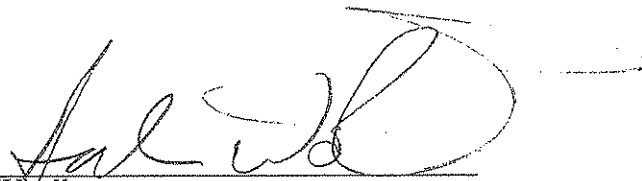
Galen Woelk, being first duly sworn upon oath, deposes and says:

1. I am of adult age and under no disability that would affect the truth of the statements set forth in this affidavit, and, unless indicated otherwise, I make those statements based on my own personal knowledge.
2. I am a defendant in this action.
3. At approximately 10:00 a.m. today, February 7, 2005, a sheriff's sale was held at the Teton County Courthouse. The property sold at the sheriff's sale was the causes of action asserted by John N. Bach in this action against me and Cody Runyan, individually & dba Runyan & Woelk (the "Causes of Action"). Runyan and I were the successful bidders. An accurate copy

of the certificate of sale we received from the sheriff following the sale is Exhibit A to this affidavit. Pursuant to Idaho Code § 11-309, the certificate of sale conveyed to us all the right Bach had in the Causes of Action.

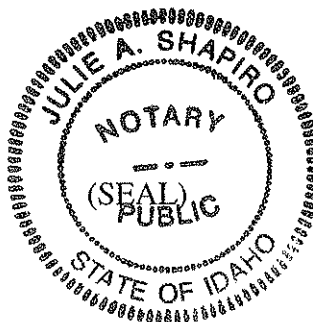
4. Immediately after we purchased the Causes of Action, Runyan assigned his entire interest in the Causes of Action to me pursuant to an Assignment Agreement. An accurate copy of the Assignment Agreement is Exhibit B to this affidavit. Thus, I am now the sole owner of the Causes of Action.


5. I wish to effectuate the immediate dismissal of the Causes of Action. I do not think they have merit, and, in any event, I have no desire to pursue claims against myself or Runyan or to permit Bach to do so on my behalf. Accordingly, upon being permitted to substitute for Bach as the plaintiff in this action with respect to the Causes of Action, I intend to cause my counsel to execute and file the Stipulation and Order for Dismissal With Prejudice that is Exhibit C to this affidavit.

  
Galen Woelk

STATE OF IDAHO )  
County of Teton ) ss.

SUBSCRIBED AND SWORN TO before me this 7th day of February, 2005.



  
Name: Julie A. Shapiro  
NOTARY PUBLIC - STATE OF IDAHO  
My commission expires 11/23/07



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of February, 2005, I caused to be served a true copy of the foregoing AFFIDAVIT OF GALEN WOELK by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

~~gal~~ X U.S. Mail, Postage Prepaid  
~~gal~~ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

X U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

gal X U.S. Mail, Postage Prepaid  
X Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

X U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452


X U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

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\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

X U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

  
\_\_\_\_\_  
Jason D. Scott

# EXHIBIT

## A

55555.0722.616706.1

001468

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

Attorneys for Judgment Creditors  
Cody Runyan and Galen Woelk, individually and d/b/a Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

CODY RUNYAN and GALEN WOELK,	)	
individually and d/b/a Runyan & Woelk,	)	Case No. CV-05-10
	)	
Judgment Creditors,	)	United States District Court for the District
	)	of Idaho Case No. CV-01-266-E-TGN
vs.	)	
	)	CERTIFICATE OF SALE
JOHN N. BACH,	)	
	)	
Judgment Debtor.	)	
	)	

UNDER AND BY VIRTUE OF the Judgment entered by the United States District Court for the District of Idaho on December 27, 2004, which was filed as a foreign judgment pursuant to Idaho Code §§ 10-1301 *et seq.* with the above-entitled court on January 6, 2005, and the Writ of Execution issued by the Clerk of the above-entitled court on January 14, 2005, both of which were directed and delivered to me as Sheriff of the County of Teton, State of Idaho, whereby I was commanded to sell the personal property hereinafter described and to apply the proceeds of such sale in satisfaction of the Judgment.

I, Ryan Kaufman, Sheriff of Teton County, State of Idaho, by my undersigned deputy, do hereby certify that I duly sold the following described personal property, to wit:

All causes of action of John N. Bach against Cody Runyan and Galen Woelk, individually & d/b/a Runyan & Woelk, asserted by John N. Bach in *John N. Bach v. Katherine D. Miller, et al.*, Case No. CV-02-0208 in the Seventh Judicial District of the State of Idaho, in and for the County of Teton ("Causes of Action").

on February 7, 2005, at 10:00 a.m. of said day, at public auction, according to law, after due and legal notice given, on the front steps of the Teton County Courthouse, Driggs, Idaho, to Judgment Creditors, Cody Runyan and Galen Woelk, individually & d/b/a Runyan & Woelk, for the sum of \$ 245.52 as a credit bid against their Judgment, said parties being the highest bidder and said sum being the highest bid made at said sale.

WITNESS my hand this 7th day of February, 2005.

RYAN KAUFMAN  
Sheriff of Teton County

By

Margaret Harte  
Deputy Sheriff

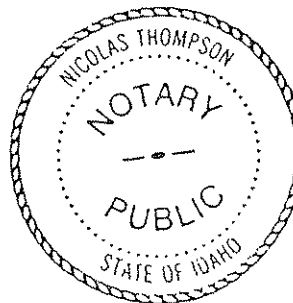
001470

STATE OF IDAHO                    )  
  ) ss.  
County of Teton                    )

On this 7th day of February, 2005, before me, Mary Lou Hatch, a  
Notary Public in and for said state, personally appeared Mary Lou Hatch,  
known or identified to me to be the person whose name is subscribed to the foregoing  
instrument, and acknowledged to me that he or she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the  
day and year in this certificate first above written.

Nicolas Thompson  
Notary Public for Idaho  
Residing at Driggs  
My commission expires 12-9-08



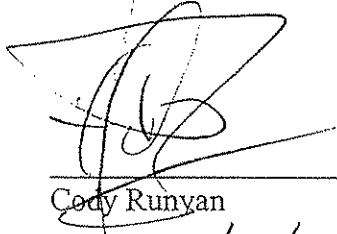
# EXHIBIT B

55555.0722.616706.1

001472

## ASSIGNMENT AGREEMENT

For value received, Cody Runyan, individually & dba Runyan & Woelk, hereby assigns to Galen Woelk all of his right, title, and interest in that certain certificate of sale (and in the property described therein) received from the Teton County Sheriff on February 7, 2005, in respect of a sheriff's sale of certain property of John N. Bach held on that date at the Teton County Courthouse in Driggs, Idaho.

  
Cody Runyan  
Date: 2/7/05

# EXHIBIT C

55555.0722.616706.1

001474



Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	STIPULATION AND ORDER FOR
vs.	)	DISMISSAL WITH PREJUDICE
	)	
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

---

**STIPULATION**

Pursuant to I.R.C.P. 41(a), Substitute plaintiff Galen Woelk and Defendants Cody Runyan and Galen Woelk, individually & dba Runyan & Woelk, hereby stipulate that all claims brought in this action against Defendants Cody Runyan and Galen Woelk, individually & dba Runyan & Woelk, shall be dismissed with prejudice in their entirety, with no award of costs and attorney fees to any party.

001475

DATED THIS \_\_\_\_\_ day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By \_\_\_\_\_  
Jason D. Scott  
Attorneys for Substitute Plaintiff Galen Woelk

DATED THIS \_\_\_\_\_ day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By \_\_\_\_\_  
Jason D. Scott  
Attorneys for Defendants Cody Runyan and Galen  
Woelk, individually & dba Runyan & Woelk

**ORDER**

Pursuant to the foregoing stipulation of the parties, and finding good cause therefor,

IT IS HEREBY ORDERED that all claims brought in this action against Defendants  
Cody Runyan and Galen Woelk, individually & dba Runyan & Woelk, are dismissed with  
prejudice in their entirety, with no award of costs and attorney fees to any party.

DATED THIS \_\_\_\_\_ day of February, 2005.

\_\_\_\_\_  
Richard T. St. Clair  
DISTRICT JUDGE

601476

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of February, 2005, I caused to be served a true copy of the foregoing STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

\_\_\_\_ U.S. Mail, Postage Prepaid  
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\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
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Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

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Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

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Hopkins Roden Crockett Hansen & Hoopes, PLLC  
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Idaho Falls, ID 83405-1219

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Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby & Moeller, Chartered  
25 North Second East  
Rexburg, ID 83440

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

001477

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Page 3

Craig L. Meadows  
Jason D. Scott  
Hawley Troxell Ennis & Hawley LLP  
P.O. Box 1617  
Boise, ID 83701-1617

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

---

Deputy Clerk

001478

Craig L. Meadows, ISB No. 1081  
Jason D. Scott, ISB No. 5615  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
E-mail: CLM@HTEH.COM

FILED  
//: 3 &  
FEB 07 2005  
TETON CO.  
MAGISTRATE COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	EMERGENCY MOTION FOR
vs.	)	SUBSTITUTION OF PARTIES AND TO
	)	SHORTEN TIME FOR HEARING
KATHERINE D. MILLER, aka KATHERINE	)	
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

Pursuant to I.R.C.P. 25(c) and I.R.C.P. 7(b)(3), Defendant Galen Woelk, individually & dba Runyan & Woelk, moves for the entry of an order immediately substituting him for John N. Bach as the sole plaintiff in this action as to all causes of action asserted by Bach against Woelk and as to all causes of action asserted by Bach against Defendant Cody Runyan, individually & d/b/a Runyan & Woelk (collectively, the "Causes of Action"). Bach would remain the sole plaintiff as to all causes of action asserted against the other defendants in this action.

The basis for this motion is that, at a sheriff's sale held at 10:00 a.m. today, February 7, 2005, Woelk and Runyan purchased the Causes of Action. Immediately thereafter, Runyan assigned his entire ownership interest in the Causes of Action to Woelk.

001479

EMERGENCY MOTION FOR SUBSTITUTION OF PARTIES AND TO  
SHORTEN TIME FOR HEARING - Page 1

Woelk does not believe that the Causes of Action have merit, and, in any event, he has no desire to pursue causes of action against himself or Runyan, his former partner. As the owner of the Causes of Action, Woelk wishes to dismiss them immediately. Accordingly, he desires to be substituted for Bach as the sole plaintiff in this action with respect to the Causes of Action. At such time as he is substituted as the sole plaintiff, he will execute a stipulation to dismiss them with prejudice.

Because those of the Causes of Action that are asserted against Woelk are set for trial beginning tomorrow, February 8, 2005, Woelk requests the entry of an order shortening the time for hearing on the motion for substitution. The motion should be heard immediately, but in any event prior to the beginning of trial.

A supporting brief and the Affidavit of Galen Woelk are filed with this motion. A proposed order also is submitted with this motion.

DATED THIS 7<sup>th</sup> day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott  
Jason D. Scott  
Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

001480

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of February, 2005, I caused to be served a true copy of the foregoing EMERGENCY MOTION FOR SUBSTITUTION OF PARTIES AND TO SHORTEN TIME FOR HEARING by the method indicated below, and addressed to each of the following:

John N. Bach  
P.O. Box 101  
Driggs, ID 83422

gdl X U.S. Mail, Postage Prepaid  
u Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Alva Harris  
P.O. Box 479  
Shelley, ID 83274

X U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Galen Woelk  
Aron & Hennig, LLP  
1472 N. 5th Street, Suite 201  
Laramie, WY 82072

gdl X U.S. Mail, Postage Prepaid  
X Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Jared M. Harris  
Baker & Harris  
P.O. Box 577  
Blackfoot, ID 83221

X U.S. Mail, Postage Prepaid  
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Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452


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\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

David H. Shipman  
Hopkins Roden Crockett Hansen & Hoopes, PLLC  
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Jason D. Scott

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Craig L. Meadows, ISB No. 1081  
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FILED  
11:36  
FEB 07 2005  
TETON CO.  
MAGISTRATE COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
	)	BRIEF IN SUPPORT OF EMERGENCY
vs.	)	MOTION FOR SUBSTITUTION OF
	)	PARTIES AND TO SHORTEN TIME FOR
KATHERINE D. MILLER, aka KATHERINE	)	HEARING
M. MILLER, Individually and dba R.E.M., et	)	
al.,	)	
	)	
Defendants.	)	
	)	

Defendant Galen Woelk, individually & dba Runyan & Woelk, submits this brief in support of his motion for the entry of an order immediately substituting him for John N. Bach as the plaintiff in this action as to all causes of action asserted by Bach against Woelk and as to all causes of action asserted by Bach against Defendant Cody Runyan, individually & d/b/a Runyan & Woelk (collectively, the "Causes of Action"). Bach would remain the sole plaintiff as to all causes of action asserted against the other defendants in this action.

**BACKGROUND AND ANALYSIS**

At approximately 10:00 a.m. today, February 7, 2005, a sheriff's sale was held at the Teton County Courthouse. (Woelk Aff. ¶ 3.) The property sold at the sheriff's sale was the



Causes of Action. (Id.) Woelk and Runyan were the successful bidders. (Id.) They received a certificate of from the sheriff following the sale. (Id. Ex. A.) Pursuant to Idaho Code § 11-309, the certificate of sale conveyed to Woelk and Runyan all the right Bach had in the Causes of Action.

Immediately after the sheriff's sale, Runyan assigned his entire interest in the Causes of Action to Woelk pursuant to an Assignment Agreement. (Id. Ex. B.) Thus, Woelk is now the sole owner of the Causes of Action. (Id. ¶ 4.)

Woelk, as the owner of the Causes of Action, wishes to effectuate their immediate dismissal. (Id. ¶ 5.) He does not think they have merit, and, in any event, he has no desire to pursue claims against himself or Runyan or to permit Bach to do so on his behalf. (Id.) Accordingly, Woelk moves pursuant to I.R.C.P. 25(c) for the entry of an order immediately allowing him to substitute for Bach as the sole plaintiff in this action with respect to the Causes of Action only. Upon entry of that order, Woelk intends to stipulate to the dismissal with prejudice of the causes of action. (Id.)

The need for immediate substitution stems from the imminent jury trial of those of the Causes of Action that are asserted against Woelk. That trial is set to begin tomorrow, February 8, 2005. Neither the parties, the jurors, nor the Court and its staff should be forced to waste time and money proceeding with the trial given that Woelk owns the Causes of Action and does not wish that they be pursued further. For that reason, Woelk also seeks the entry of an order shortening the time for hearing on the motion for substitution so as to enable it to be heard before the scheduled beginning of trial.

The pertinent portion of I.R.C.P. 25(c) is as follows:

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

I.R.C.P. 25(c). As interpreted by to the Idaho Supreme Court, "Rule 25(c) automatically provides a substitution when there has been a transfer of interest without any action by the court if the original party remains in the lawsuit." However, if the original party wishes to be dismissed, the court must order the transferee *substituted or joined.*" *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 375 n. 5, 816 P.2d 326, 331 n. 5 (1991) (italics in original; underscoring added). The sheriff's sale effected a transfer of Bach's interest in the Causes of Action. Thus, under *Rodriguez*, Woelk automatically and without any action by the Court has come into this action as a co-plaintiff with respect to the Causes of Action. The only decision the Court must make is whether Woelk is substituting for Bach as plaintiff or instead merely is joining as a co-plaintiff with respect to the Causes of Action.

In other words, the Court must decide whether Bach is to drop out or instead is to continue as Woelk's co-plaintiff with respect to the Causes of Action. Obviously, Woelk and Bach will not be able to agree on the appropriate disposition of the Causes of Action. Bach undoubtedly wishes to pursue them through trial and appeal, and Woelk wishes to dismiss them immediately. Thus, there will be a stalemate if Woelk merely joins as a co-plaintiff rather than substitutes for Bach as the sole plaintiff. The Court should not allow such a stalemate to occur. Instead, the just and logical result is for the Court to elevate the rights of the current owner of the Causes of Action above those of the displaced owner. Bach, as the displaced owner, in actuality has no substantive rights in the Causes of Action. Idaho Code § 11-309. Instead, he merely has a procedural right under I.R.C.P. 25(c) to continue as a co-plaintiff until the Court says otherwise, which it now should do. "[T]he dismissal of the original party in a substitution process is contemplated by Rule 25(c)." *Id.* at 378, 816 P.2d at 334. There is no reason to allow Bach any further say in the disposition of the Causes of Action. He does not own them. Woelk does.

Woelk should be substituted for Bach as the sole plaintiff with respect to the Causes of Action, whereupon he can dismiss them and save all concerned the time and expense that would be wasted by proceeding with trial. Given that Woelk both owns the Causes of Action to be tried and is the target of them, the trial is a zero-sum game. No matter the result, there would be no winner. The trial has been rendered a nullity. It is senseless to proceed with it.

### CONCLUSION

The Court should shorten the time for hearing on Woelk's motion for substitution so as to hear that motion immediately, and the Court should order the immediate substitution of Woelk for Bach as the sole plaintiff in this action with respect to the Causes of Action only. Woelk then will stipulate to the dismissal with prejudice of the Causes of Action, and the trial set to begin on February 8, 2005, can be vacated.

DATED THIS 7<sup>th</sup> day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott  
Jason D. Scott  
Attorneys for Defendant Galen Woelk, individually  
& dba Runyan & Woelk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of February, 2005, I caused to be served a true copy of the foregoing BRIEF IN SUPPORT OF EMERGENCY MOTION FOR SUBSTITUTION OF PARTIES AND TO SHORTEN TIME FOR HEARING by the method indicated below, and addressed to each of the following:

John N. Bach  
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Driggs, ID 83422

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Overnight Mail  
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Alva Harris  
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Shelley, ID 83274

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\_\_\_\_\_  
Jason D. Scott

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FILED IN CHAMBERS

at Idaho Falls

Bonneville County

Honorable Richard T. St. Clair

Date February 7, 2005Time 1:50 P.Deputy Clerk M. Southwick

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 Jason D. Scott, ISB No. 5615  
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## ATTORNEY FOR DEFENDANT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 COURT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,	)	
	)	CASE NO. CV-02-208
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER
KATHERINE M. MILLER, et. al.,	)	
	)	
Defendant.	)	

The Court having been presented with Defendant Galen Woelk's EMERGENCY MOTION FOR SUBSTITUTION OF PARTIES AND TO SHORTEN TIME FOR HEARING, the BRIEF IN SUPPORT OF EMERGENCY MOTION FOR SUBSTITUTION, and the AFFIDAVIT OF GALEN WOELK with EXHIBITS A B and C, having reviewed the motion and Court file, and good cause appearing;

IT IS HEREBY ORDERED AND THIS DOES ORDER that Defendant Galen Woelk, individually & dba Runyan & Woelk, is hereby SUBSTITUTED for John N. Bach as the sole

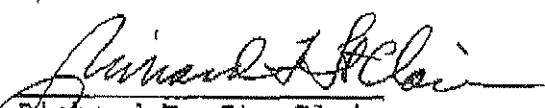
ORDER

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plaintiff in the above-entitled action as to all causes of action asserted by Bach against Woelk and as to all causes of action asserted by Bach against Defendant Cody Runyan individually & d/b/a Runyan and Woelk.

DATED this 7<sup>th</sup> day of February, 2005.

  
Richard T. St. Clair  
District Judge

CERTIFICATE OF ENTRY  
BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION

I, the undersigned and Clerk of the above-entitled Court, hereby certify that pursuant to Idaho rule of Civil Procedure 77(d), a copy of the foregoing was duly posted by first class mail to the following persons at the names and addresses stated below.

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ORDER

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p. 4

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Clerk

ORDER

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at Idaho Falls

Bonneville County

Honorable Richard T. St. Clair

Date February 7, 2005

Time 1:50 p

Deputy Clerk M. Southwick

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Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER, aka KATHERINE  
 M. MILLER, Individually and dba R.E.M., et  
 al.,

Defendants.

Case No. CV-02-0208

STIPULATION AND ORDER FOR  
 DISMISSAL WITH PREJUDICE

## STIPULATION

Pursuant to I.R.C.P. 41(a), Substitute plaintiff Galen Woelk and Defendants Cody

Runyan and Galen Woelk, individually & dba Runyan & Woelk, hereby stipulate that all claims brought in this action against Defendants Cody Runyan and Galen Woelk, individually & dba Runyan & Woelk, shall be dismissed with prejudice in their entirety, with no award of costs and attorney fees to any party.

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Page 1

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DATED THIS 7<sup>th</sup> day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott  
Jason D. Scott  
Attorneys for Substitute Plaintiff Galen Woelk

DATED THIS 7<sup>th</sup> day of February, 2005.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott  
Jason D. Scott  
Attorneys for Defendants Cody Runyan and Galen  
Woelk, individually & dba Runyan & Woelk

**ORDER**

Pursuant to the foregoing stipulation of the parties, and finding good cause therefor,  
IT IS HEREBY ORDERED that all claims brought in this action against Defendants  
Cody Runyan and Galen Woelk, individually & dba Runyan & Woelk, are dismissed with  
prejudice in their entirety, with no award of costs and attorney fees to any party.

DATED THIS 7<sup>th</sup> day of February, 2005.

Richard T. St. Clair  
Richard T. St. Clair  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of February, 2005, I caused to be served a true copy of the foregoing STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE by the method indicated below, and addressed to each of the following:

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STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Page 3

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Deputy Clerk

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Page 4

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FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date February 11, 2005  
Time 9:20  
Deputy Clerk M. Menthwick

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka  
KATHERINE M. MILLER, ALVA  
HARRIS, Individually & dba  
SCONA, INC., JACK LEE McLEAN,  
BOB FITZGERALD, OLE OLSON, BOB  
BAGLEY & MAE BAGLEY, husband and  
wife, BLAKE LYLE, Individually  
and dba GRAND TOWING, GALEN  
WOELK and CODY RUNYAN,  
Individually & dba RUNYAN &  
WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARL  
HAMBLIN, STAN NICKELL, BRET HILL  
& DEENA R. HILL, and DOES 1  
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**THIRTY FIFTH ORDER  
ON PENDING MOTIONS**

**I. INTRODUCTION**

Pending before the Court are the following motions:

1. defendant Katherine Miller's memorandum of costs and attorney fees, filed on November 5, 2003, and plaintiff John Bach's motion to disallow Miller any costs and attorney fees

THIRTY FIFTH ORDER ON PENDING MOTIONS

1

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filed on November 17, 2003, with the Court reserving ruling until final judgment pursuant to its Twenty Second Order;

2. defendant Miller's motion to enforce liability on injunction bond and release bond to Miller, filed on November 21, 2003, with the Court reserving ruling until final judgment pursuant to its Twenty Second Order;

3. defendant Earl Hamblin's motion for attorney fees and costs, filed on March 10, 2004, with the Court reserving ruling until final judgment pursuant to its Twenty Sixth Order;

4. defendants Bret and Deena Hill's memorandum of costs and attorney fees, filed on May 19, 2004; and

5. plaintiff Bach's proposed permanent injunction against all defendants prohibiting entry on real properties described in the amended complaint in which Bach has an ownership interest and such defendants do not, based on the Court's Thirty Third Order.

Having considered the motions, affidavits filed in support and in opposition, written arguments, and oral arguments of the parties at previous hearings, the record in this case, this Court renders the following decision on the pending motions.

## **II. AUTHORITY AND STANDARD OF REVIEW**

The determination as to the prevailing party in an action for purposes of awarding costs and attorney fees under Rule 54,

I.R.C.P., is committed to the sound discretion of the trial court. *J. R. Simplot Co. v. Chemetics Int'l, Inc.*, 130 Idaho 255, 939 P.2d 574 (1997).

The determination as to which parties are prevailing parties for purpose of an award of reasonable attorney fees is committed to the discretion of the trial court. *Suitts v. First Security Bank*, 125 Idaho 27, 35, 867 P.2d 260, 268 (App. 1993); *Bumgarner v. Bumgarner*, 124 Idaho 629, 862 P.2d 321 (App. 1993). *Decker v. Homeguard Systems*, 105 Idaho 158, 666 P.2d 1169 (App. 1983). Under Rule 54, I.R.C.P. the district court must use its "sound discretion" and consider the "final judgment or result in relation to the relief sought" and the "extent to which each party prevailed upon each" of the issues or claims asserted. Then the court may "apportion the costs between and among the parties in a fair and equitable manner." *Joseph C.L.U. Ins. Assoc. V. Vaught*, 117 Idaho 555, 557, 789 P.2d 1148 (App.1990). Also, where the parties have succeeded on entirely separate claims, those claims are properly distinguished and should be analyzed separately in determining whether attorney fees are appropriately awarded. *Bumgarner*, supra. At 644, 862 P.2d at 336. The trial court is authorized only to award attorney fees as provided by statute or contract. Id.

Rule 54(d), I.R.C.P., allows a prevailing party to recover certain costs of right, including court filing fees, service of pleading fees, expenses of preparing exhibits not to exceed \$500, reasonable expert witness fees for an expert who testifies at a deposition or at trial, not to exceed \$2,000 for each expert witness who testifies, charges for reporting and transcribing of a deposition taken in preparation for trial whether or not the deposition is read into evidence.

A trial court may, at its discretion, award a prevailing party "necessary and exceptional costs reasonably incurred." Rule 54(d)(1)(D), I.R.C.P. When ruling upon objections to discretionary costs, the trial court "shall make express findings as to why such specific item of discretionary cost should or should not be allowed." Rule 54(d)(1)(D), I.R.C.P. The court need not evaluate the costs item by item, but must make express findings regarding "the general character of the requested costs." *Fish v. Smith*, 131 Idaho 492, 494, 960 P.2d 175, 177 (1998) (quoting *Roe v. Harris*, 128 Idaho 569, 574, 917 P.2d 403, 408 (1996), overruled on other grounds by *Rincover v. State, Dep't of Finance*, 132 Idaho 547, 976 P.2d 473 (1999)). Routine litigation costs and travel expenses are not "exceptional" costs under Rule 54(d)(1)(D), I.R.C.P. *Fish*, supra at 494, 960 P.2d at 177.

### III. ANALYSIS

Defendant Miller seeks costs of right, discretionary costs, and attorney fees under I. C. § 12-121. Miller is awarded costs of right for filing fees \$69.00, service fees \$20.00, exhibits \$96.81, and expert witness fees for Richard Berges \$400.00, totaling \$225.81. The Court denies all discretionary costs sought by Miller for photocopies, postage, faxes, legal secretaries and westlaw, totaling \$1,644.30, because such costs were routine litigation expenses and "not exceptional." The Court denies all attorney fees sought by Miller because many of Bach's claims in his amended complaint and many of Bach's defenses to Miller's counterclaim were supported by competent facts and applicable law, many issues of first impression were raised particularly in post judgment motions regarding execution and writs of assistance. Since there were legitimate triable issues for the jury to resolve, attorney fees may not be awarded under I. C. § 12-121. *Nampa & Meridian Irrigation Dist. V. Washington Fed. Sav.*, 135 Idaho 518, 20 P.3d 702 (2001).

Defendant Miller seeks the \$2,500 cash bond posted by Bach under Rule 65(c), I.R.C.P., in obtaining a preliminary injunction as to entering the 86.6 acre tracts described in the



original complaint against Miller and other defendants in August 2002. The purpose of the bond under Rule 65(c) is to secure payment of costs, damages and reasonable attorney fees incurred by any party found to have been wrongfully enjoined. However, the bond is not to secure attorney fees and costs incurred to defend the merits of the action. *Devine v. Cluff*, 110 Idaho 1, 713 P.2d 437 (App. 1985). This Court ultimately dissolved the preliminary injunction as to Miller, and Miller incurred well over \$2,500 of attorney fees in post judgment motions to dissolve the preliminary injunction apart from the merits of the action. Several other defendants were preliminarily enjoined from entering certain real properties in which Bach owns an interest, and a permanent injunction will issue against several other defendants. No other defendant has any reasonable basis to claim a portion of the injunction bond. Therefore, the clerk of court shall release the \$2,500 bond and all interest, if any, to Miller.

Defendant Hamblin seeks costs of right, discretionary costs, and attorney fees under I. C. § 12-121. Hamblin is awarded costs of right for filing fees \$61.00, and reporter fees for Bach's deposition \$265.00, totaling \$326. The Court denies all discretionary costs sought by Hamblin for photocopies, postage, faxes, travel and westlaw, totaling \$622.57, because

such costs were routine litigation expenses and "not exceptional." Bach's claims against Hamblin involved activities on or adjacent to the 86.6 acres that were quieted in the name of Miller and against Bach having any interest therein by judgment entered on October 23, 2003. After October 23<sup>rd</sup> there was no supportable reason for Bach to continue to advance such claims against Hamblin. Although Bach made claims against Hamblin related to other real properties, Hamblin never entered such properties and it was not necessary to sue Hamblin as to such other properties. Hamblin disclaimed any interest in such properties. I. C. § 12-121 allows a prevailing party to recover reasonable attorney fees where the losing party "pursues" a case without reasonable foundation in fact and law, which after the October 23<sup>rd</sup> judgment against Bach was as to claims against Hamblin. Therefore, Hamblin is entitled to a reasonable attorney fee for defending after October 23<sup>rd</sup>. Considering all the factors in Rule 54(e)(3), this Court finds that \$8,354.00 (including \$480.00 estimated after the March 9, 2004 memorandum of costs and fees was filed) is a reasonable attorney fee for legal services incurred by Hamblin after October 23, 2003.

Defendants Hill seek costs of right, discretionary costs, and attorney fees under I. C. § 12-121. The Hills are awarded costs of right for filing fees \$54.00, and exhibit expenses

\$85.00, totaling \$139. The Court denies all discretionary costs sought by the Hills for photocopies, postage, faxes, and travel totaling \$244.10, because such costs were routine litigation expenses and "not exceptional." Bach's claims against the Hills involved a house on a 1 acre tract that the Hills purchased for fair value from defendant Scona, Inc. Bach's claims were mostly barred by res judicata or collateral estoppel effect of prior litigation lost by Bach. Bach did not support his claims by any admissible facts. This Court finds that Bach brought and pursued his claims against the Hills without foundation in fact and law, and that the Hills are entitled to a reasonable attorney fee for defending such claims. However, the Hills are not entitled to recover attorney fees to set aside a clerk's default attributed in action on their part or their attorney. Considering the supporting attorney fee affidavit and the factors in Rule 54(e)(3), I.R.C.P., this court finds that \$10,000.00 is a reasonable attorney fee for legal services incurred by the Hills to defend Bach's amended complaint.

Plaintiff Bach's proposed permanent injunction is not in the proper form, and contains arguments and comments on matters not properly put in a permanent injunction. The Court will include in its final judgment an order permanently enjoining certain defendants from entering certain real properties

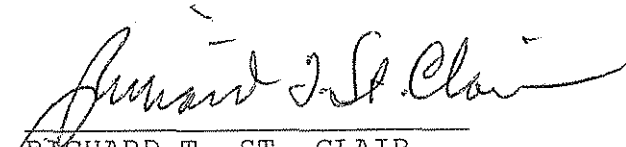
described in the amended complaint in which Bach owns an interest.

#### IV. CONCLUSION AND ORDER

Based on the foregoing analysis, this Court concludes and THEREFORE IT IS HEREBY ORDERED that:

1. plaintiff John Bach shall pay defendant Katherine Miller \$225.81 in costs of right, and Miller shall recover no discretionary costs or attorney fees under I. C. § 12-121;
2. the clerk of court shall release the \$2,500 cash bond posted in August, 2002, plus all accrued interest, to defendant Katherine Miller;
3. plaintiff John Bach shall pay defendant Earl Hamblin \$326.00 in costs of right and \$8,354.00 in attorney fees under I. C. § 12-121, but Hamblin shall recover no discretionary costs;
4. plaintiff John Bach shall pay defendants Bret and Deena Hill \$139.00 in costs of right and \$10,000 in attorney fees under I. C. § 12-121, but the Hills shall recover no discretionary costs; and
5. the Court shall enter a final judgment with a permanent injunction against all defendants prohibiting entry on real properties described in the amended complaint in which Bach has an ownership interest and such defendants do not.

DATED this 11th day of February, 2005.

  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2005, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Telefax No. 626-441-6673 (MAIL)

John N. Bach  
P.O. Box 101  
Driggs, ID 83422 (MAIL)

Alva Harris  
P. O. Box 479  
Shelley, ID 83274  
Telefax No. 208-357-3448 (MAIL)

Galen Woelk  
Runyan & Woelk, P.C.  
P.O. 533  
Driggs, ID 83422  
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Jason Scott  
P. O. Box 100  
Pocatello, ID 83204  
Telefax No. 208-233-1304 (MAIL)

Jared Harris  
P. O. Box 577  
Blackfoot, ID 83221  
Telefax No. 208-785-6749 (MAIL)

Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

(MAIL)

David Shipman  
P. O. Box 51219  
Idaho Falls, ID 83405-1219

(MAIL)

Gregory Moeller  
P. O. Box 250  
Rexburg, ID 83440-0250

(MAIL)

RONALD LONGMORE  
Clerk of Court



Deputy Court Clerk

ED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date February 11, 2005  
Time 9:20  
Deputy Clerk McSauthrick

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka  
KATHERINE M. MILLER, ALVA  
HARRIS, Individually & dba  
SCONA, INC., JACK LEE McLEAN,  
BOB FITZGERALD, OLE OLESEN, BOB  
BAGLEY & MAE BAGLEY, husband and  
wife, BLAKE LYLE, Individually  
and dba GRAND TOWING, GALEN  
WOELK and CODY RUNYAN,  
Individually & dba RUNYAN &  
WOELK, ANN-TOY BROUGHTON, WAYNE  
DAWSON, MARK LIPONIS, EARL  
HAMBLIN, STAN NICKELL, BRET HILL  
& DEENA R. HILL, and DOES 1  
through 30, Inclusive,

Defendants.

Case No. CV-02-208

FINAL JUDGMENT

On September 27, 2002, plaintiff John N. Bach ("Bach") filed  
a first amended complaint against defendants Katherine Miller  
("Miller"), Alva Harris ("Harris"), Scona, Inc. ("Scona"), Jack  
Lee McLean ("McLean"), Bob Fitzgerald ("Fitzgerald"), Ole Olesen  
("Olesen"), Blake Lyle ("Lyle"), Galen Woelk ("Woelk"), Ann-Toy  
Broughton ("Broughton"), Wayne Dawson ("Dawson"), Earl Hamblin  
("Hamblin"), Stan Nickell ("Nickell"), Bret and Deena Hill  
FINAL JUDGMENT

("Hills") and several other defendants, seeking as to these defendants a decree quieting title to several tracts of real property in Teton County, Idaho, and seeking compensatory damages. Service of summons was never effected on other named defendants Bagley, Runyan, Liponis, and Does 1 through 30.

Defendants Nickell and McLean died during the course of the proceedings. Arlene Nickell, as surviving spouse of Stan Nickell, and Lynn McLean, as appointing personal representative of the estate of Jack McLean, were substituted as party defendants. Interlocutory judgments of dismissal were entered after a jury verdict and court findings on non jury claims in favor of defendants Miller and Broughton. Interlocutory partial summary judgments were entered in favor of defendants Woelk, Hamblin, Nickell, and the Hills. Interlocutory default judgments were entered against defendants Harris, Scona, McLean, Fitzgerald, Olsen, Lyle, and Dawson. Remaining claims against defendant Woelk were dismissed by stipulation. A permanent injunction is proper as to certain defendants entering certain real properties hereafter described. All claims and counterclaims have now been resolved.

WHEREFORE, by virtue of the law and by the reasons of the premises aforesaid, it is ordered and adjudged pursuant to Rule 58(a), I.R.C.P. as follows:

IT IS HEREBY ORDERED that:

FINAL JUDGMENT

2

001506



1. The Judgment entered in favor of defendants Miller and Broughton, and against plaintiff Bach on October 23, 2003, is now final.

2. The Amended Default Judgment entered in favor of plaintiff Bach, and against defendant Dawson on February 23, 2004, is now final.

3. The Default Judgment entered in favor of plaintiff Bach and against defendants Harris, Scona, Fitzgerald, Olesen, and Lyle on February 27, 2004, is now final.

4. The orders granting partial summary judgment in favor of defendants Woelk, Hamblin, Nickell, and the Hills are now final.

5. The Default Judgment in favor of plaintiff Bach and against defendants Hill quieting title on the second and fourth counts on June 24, 2004, is now final.

6. The Default Judgment entered in favor of Bach and against defendant McLean on September 21, 2004, is now final.

7. Defendants Miller, Harris, Scona, McLean, Fitzgerald, Olesen, Lyle, Woelk, Broughton, Hamblin, Nickell and the Hills are permanently enjoined forever from entering the following described real property located in Teton County, Idaho:

8.5 acres adjacent to 195 North Highway 33 north of Driggs, described as follows:

Lot 1, Block 1, Teton Peaks View, Division 1, as per the recorded plat thereof, Teton County, Idaho. Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights appurtenant thereto, LESS approximately 1 acre on the East side of Highway 33, North of Driggs, Idaho, with the address of 195 N. Hwy 33, Driggs, Idaho, beginning at the NW corner of Lot 1, Block 1, Teton Peaks View, Division 1, Teton County, Idaho according to said recorded plat; running thence South 200 feet; thence

FINAL JUDGMENT

East 220 feet; thence North 200 feet; thence West 220 feet to the point of beginning; or

8. Defendants Miller, Harris, Scona, Fitzgerald, Olesen, Lyle, Woelk, Broughton, Dawson, Hamblin, Nickell and the Hills are permanently enjoined forever from entering the following described real property located in Teton County, Idaho:

the Drawknife 33 acre real property in Teton County, Idaho, described as follows:

SE1/4SW1/4 of Section 35, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho,  
LESS a tract beginning at the SE corner of the SW1/4 of Section 35, Township 6 North, Range 45 EBM; running thence North 516 feet; thence West 295 feet; thence South 516 feet; thence East 295 feet to the point of beginning. acres in Teton County, Idaho.


9. Defendants Miller, Harris, Scona, Fitzgerald, Olesen, Lyle, Woelk, Broughton, Hamblin, Nickell and the Hills are permanently enjoined forever from entering the following described real property located in Teton County, Idaho:

the Peacock 40 acre real property in Teton County, Idaho, described as follows:

SW1/4SE1/4 of Section 6, Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho.

10. The amount of any costs and attorney fees not already decided by order shall be determined hereafter under Rule 54, I.R.C.P.

DATED this 11th day of February, 2005.

  
RICHARD T. ST. CLAIR  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2005, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Telefax No. 626-441-6673 (MAIL)

John N. Bach  
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Jason Scott  
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Jared Harris  
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Anne Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452 (MAIL)

David Shipman  
P. O. Box 51219  
Idaho Falls, ID 83405-1219 (MAIL)

Gregory Moeller  
P. O. Box 250  
Rexburg, ID 83440-0250

(MAIL)

RONALD LONGMORE  
Clerk of Court

  
Deputy Court Clerk

Jared M. Harris, Esq.  
BAKER & HARRIS  
199 W Bridge  
P.O. Box 577  
Blackfoot, ID 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-mail: bakerharrislaw@cableone.net  
Idaho State Bar No. 4488

FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Richard T. St. Clair  
Date February 17, 2005  
Time 10:30  
Deputy Clerk M. Southwick

Attorneys for Defendants Bret & Deena R. Hill

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

Case No. CV-02-208

v.

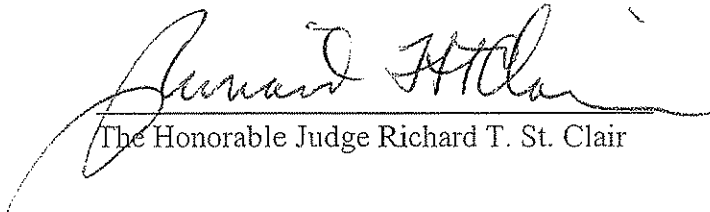
JUDGMENT

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, Individually  
& dba R.E.M., and CACHE RANCH,  
ALVA A. HARRIS, Individually & dba  
SCONA, INC., a sham entity, JACK LEE  
McLEAN, BOB FITZGERALD,  
Individually & dba CACHE RANCH,  
OLY OLESEN, BOB BAGLEY & MAE  
BAGLEY, husband and wife, BLAKE  
LYLE, Individually & dba GRANDE  
TOWING, and also GRANDE BODY &  
PAINT, GALEN WOELK & CODY  
RUNYAN, Individually & dba RUNYAN  
& WOELK, ANN-TOY BROUGHTON,  
WAYNE DAWSON, MARK LIPONIS,  
EARL HAMLIN, STAND NICKELL,  
BRET & DEENA R. HILL, DOES 1  
through 30 Inclusive,

Defendants.

THIS COURT, having entered its Order granting Defendants Bret and Deena Hill costs of right in the amount of \$139.00 and \$10,000.00 in attorney's fees, WHEREFORE, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed that Defendants Bret and Deena Hill, do have and recover of and from said Plaintiff John Bach, the sum of \$10,139.00, costs and attorney's fees; together with interest thereon at the judgment rate until paid; that execution may issue on the foregoing instrument.

SO ORDERED this 17<sup>th</sup> day of February, 2005.

  
The Honorable Judge Richard T. St. Clair

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing **JUDGMENT** was mailed by first class mail with prepaid postage and/or hand delivered and/or transmitted by facsimile this 17<sup>th</sup> day of February, 2005, to:

Attorneys Served:

Jared M. Harris  
BAKER & HARRIS  
199 W Bridge  
PO Box 577  
Blackfoot, ID 83221

(☒) Mail

John N. Bach  
P O Box 101  
Driggs, ID 83422

(☒) Mail

Alva Harris  
PO Box 479  
Shelley, ID 83274

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Jason D. Scott  
HALLEY TROXELL ENNIS & HALLEY  
P O Box 100  
Pocatello, ID 83204

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Galen Woelk  
RUNYAN & WOELK  
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David Shipman  
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Gregory Moeller  
P O Box 250  
Rexburg, ID 83440-0250

(☒) Mail

Anne Toy-Broughton  
1054 Rammell Mountain Road  
Tetonia, ID 83452

(☒) Mail

\_\_\_\_\_  
CLERK OF THE DISTRICT COURT

By:   
Deputy

JOHN N. BACH  
1858 S. Euclid Avenue  
San Marino, CA 91108  
Tel: (626) 799-3146  
(Local Idaho: P.O. Box 101  
Driggs, ID 83422/(208) 354-8303

FILED  
5:02  
FEB 23 2005  
TETON CO.  
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff,

v.

KATHERINE D. MILLER, aka  
KATHERINE M. MILLER, Individually  
& dba P.E.M., ESTATE OF STAN  
NICKELL, et al.,

Defendants...

PLAINTIFF JOHN N. BACH'S  
MOTION TO STRIKE MOTION FOR  
ATTORNEYS FEES AND COSTS BROUGHT  
BY DEFENDANTS, Estate of Stan  
Nickell, Personal Representative;  
and PLAINTIFF'S MEMORANDUM BRIEF  
IN SUPPORT OF SAID MOTION AND IN  
OPPOSITION TO NICKELL'S ESTATE  
MOTION FOR ATTORNEYS FEES & COSTS.  
& MOTION FOR SANCTIONS. Rule 11(a)(1).  
A FULL HEARING IS NOT JUST REQUESTED BUT FURTHER REQUIRED (ID CONST.  
Art. I, Sec 13, IRCP, Rule

Hearing Date: Mar 11, 2005 @ 9 a.m, Driggs, ID

NOTICE IS HEREBY GIVEN BY PLAINTIFF JOHN N. BACH, that on  
March 11, 2005 @ 9 a.m., or as soon as the herein stated motions  
can be heard, at Teton County Courthouse, Driggs, ID 83422, he  
will further present evidence and argue his motions that he makes  
now for and ORDER or ORDERS to;

1. ORDER TO STRIKE the Defendants, Estate of Stan Nickell, Arlene Nickell, Personal Representative's MOTION FOR ATTORNEYS FEES AND COSTS of February 17, 2005, and to also STRIKE the offered Affidavit of Gregory W. Moeller and Memorandum of Costs and Attorneys Fees, which defendant's motions has not been noticed for any hearing as required by the Idaho Rules of Civil Procedure, and which motion is without either legal basis, authority nor any proper factual basis and/or showing whatsoever, either under IRCP, Rule 54(e), I.C. 12-120 or any other grounds in law or fact.
2. THE ORDER TO STRIKE WITH ORDER RE SANCTIONS, INFRA, & OTHER MOTIONS OF PLAINTIFF IS ALSO PRESENTED IN OPPOSITION TO SAID DEFENDANTS'



MOTION FOR ATTORNEYS FEES AND COSTS.

3. ORDER FOR SANCTIONS, ~~INDEPENDENTLY, PER~~ IRCP, RULE 11(a)(c); AND ALSO JOINTLY, PER THE FOREGOING MOTION NO. 1, & 2. TO DENY OUTRIGHT SAID DEFENDANTS' MOTION FOR ATTORNEY FEES & COSTS, AS VEXATIONOUSLY, WITHOUT MERIT AND/OR FRIVOLOUSLY BROUGHT, ETC.

The foregoing motions are based upon the attached affidavit of Plaintiff JOHN N. BACH, with the initial accompanying MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTIONS AND ALSO IN OPPOSITION TO DEFENDANTS' SAID MOTION FOR ATTORNEYS FEES AND COSTS. and upon the plaintiff's previously filed motions, memoranda and other documents, affidavits, etc., which are requested to be judicially noticed, and which establish that said defendants are neither the prevailing parties herein, nor were the claims or causes of action filed against defendant STAN NICKELL, either frivolous, without merit, vexatious, nor brought to harass, annoy or unjustly intimidate him or his estate, but were, properly and justifiable filed per the FIRST AMENDED COMPLAINT herein to secure the perfection and securement unto plaintiff of viable and validly presented claims, among which claims, but for the prejudicial errors, orders and judgment of a biased, prejudiced and improperly unconstitutionally acting judge, would have more than resulted in both injunctive relief and monetary damages against STAN NICKELL and his estate. A further basis of said plaintiff's motion is the glaring and patently overbloomed, overstated and exorbitant as well as unnecessary hours, purported legal services, costs, or claimed related expenses etc., as well as self serving hearsay conclusions, speculations and statements of Gregory W. Moeller per his affidavit and attachments thereto, offered in support of defendants' motion for attorney fees and costs. DATED: Feb. 23, 2005

*John N. Bach*

AFFIDAVIT OF JOHN N. BACH, IN SUPPORT OF HIS  
MOTIONS & IN OPPOSITION TO DEFENDANTS' MOTIONS  
FOR ATTORNEYS FEES & COSTS

STATE OF IDAHO; )

COUNTY OF TETON) ss I, JOHN N. BACH, being duly placed under  
oath, give personal testimony of my own  
knowledge, participation, involvement and  
understanding, as follows:

1. I am the plaintiff herein, as and against the claims and causes of action, that I set forth against defendant STAN NICKELL, per my FIRST AMENDED COMPLAINT, filed herein, September 27, 2002. I have read said defendant estate's motion for attorney fees and costs and the offered Affidavit of Gregory W. Moeller with attachments thereto, and not only object to said motions and affidavit, as neither within the provisions of IRCP, Rule 54(e) nor I.C. 12-120 but in fact, a deliberately spurious, frivolous, without merit, harassing motion and affidavit brought to obstruct justice, to vexatiously cause affiant further damages and losses, as well as to graps at the prejudices and biases of the judge presiding over this action, which judge affiant has raised his disqualification and recusal at various stages herein and reiterates such moreso, now in view of this Judge's flagrant violations of affiant's procedural and substantive rights to due process and reflected by said judges orders, rulings and eventual judgment, especially as mostly recently shown on February 7, 2005 through February 11, 2005, especially in utterly failing to give notices, hold required hearings and allow affiant to prepare, present and argue his positions and oppositions to whatever orders, ruling or judgment was unilaterally and in star chamber mode issued by said judge during said period of Feb. 7 through Feb. 11, 2005, and prior thereto.

2. The conclusions and hearsay statements and speculations set forth in Gregory W. Moeller's affidavit as found in his para-

graphs 1, 4, 5, 6, 7, and 8 are not only opinions and conclusions without adequate foundational showings, authentications or proper qualifications being evidentiary presented, but, highly speculative, hearsay and inadmissible, irrelevant rantings and conjectures. Nowhere in said affidavit does Moeller states that he is testifying of his own personal knowledge, nowhere, does he give any of his past trial experience or legal qualifications that would permit his being qualified as an expert in defending the claims of affiant against NICKELL of the FIRST AMENDED COMPLAINT; nowhere does he state with relevant, admissible testimony of what other attorneys, who are qualified, knowledgeable and experienced in such defense against affiant's claims as to their normal range or specific hourly charges, such as to their insurer clients, to whom they give much reduced rates and are assisted by the insurer's claim departments. and programed stages of defense motions, tactics and computerized programs re legal authorities, arguments and strategies, all of which are spoon fed to defense counsel like Mr. Moeller; and especially, in paragraphs 5 through 8, said affidavit fails to relevantly and admissibly set forth the facts which would even justify the use of his words of "reasonable", "numerous and exotic pleadings were filed and had to be responded to as if they all had merit", "given the manner the claims were presented, and the type of claims made, the attorney fee set forth above is reasonable" nor do any statements therein, explain, justify or support whatsoever, his claimed 87.5 hours, his standard billing rate of \$120.00 nor his calculations of \$10,470.00 for total fees nor of his total costs of \$670.42 or of the wholly unproven figure or amount of unsupported "Slip Value" figures on the last page of his attached documents, or of their total \$744.54. Nowhere does Moeller define, described or identify with definiteness,

concise description and exact statement of what filings, motions, specific research, review of documents, materials, etc., he actually involved and consumed/spent his precise time as set forth in his nonverified hours or quarter hour portions he includes speciously in his overstated billings. Further Moeller's contentions and inadmissible conclusions that "Numerous hearings in this matter . . . required counsel to travel to Driggs and Idaho Falls!" fail to detail what trips, what dates, for what purposes, what hours were just incurred for travel if at all, and why his travelling time to Driggs or Idaho Falls are worth \$120.00 an hour. Moreso, Mr. Moeller's trip to Driggs, for the beginning of the jury selection on June 9 or 10, 2003, was wholly unnecessary, other than to pay a social and personal visit to Judge St. Clair, the latter who went confronted by affiant's presence backstage of the Teton High School auditorium, introduced Mr. Moeller to affiant. Nor does Mr. Moeller identify that he did not personally appear at the deposition of affiant noticed and taken by attorneys for defendant Earl Hamblin, but was only available by telephone from his office, and asked affiant questions for some 30-40 minutes if that at all, while affiant was in present in the law offices of Runyan & Woelk, Driggs, Idaho. Moeller's entries of 12-18-03 through 1-28-04 are contrivances wholly unsupported factually or otherwise and his claimed hours incurred of 18.55 hours @ \$120 hourly, or some \$2,126.00, are perjuriously contrived. Even his inadequately described services from 2/2/04 through 6/2/04 whenever he uses the phrase "receipt and review of Bach pleadings" or of "various pleadings" or "review misc Bach pleadings", such phrases being used some 22 instances, all without any specification, must be also considered as perjuriously skewed, as the word "pleadings" by I.R.C.P., Rule 76 is defined only as to complaint, answer, counterclaims, cross compl-

Third Party complaint, Supplemental complaints, Complaints in Intervention, etc. per Rule 7(a).

3. The incompleteness, lack of details and readily ascertainable legal efforts/work on what definite motions, filings, etc., are not subject to this Court's interpretation nor whimsical conjectures of what Mr. Moeller must have done, meant to state or even was saying. The preciseness of detail, facts, descriptions of the exact and relevant services that might have been rendered are missing from Mr. Moeller's affidavit and this Court cannot fill in such blanks or voids.

4. Affiant further objects to and opposes any effort by Mr. Moeller to amend or present any further affidavit to somehow correct or present the required showing even if his client were entitled to such claimed speciously presented attorneys fees and costs, under Rule 54(e) et seq. or 12-120.

5. Affiant has over twentyeight (28) years experience as a past licensed California attorney, and over 15 years of serving as insurance defense counsel in civil actions, and knows not only from such personal experience in numerous, over 200 plus cases, and his participation personally at national insurance defense counsel seminars, workshops, conventions and trial advocate college courses, that the undescribed work, efforts or claimed legal services, are patently not valid, not reasonable nor necessarily incurred and that the claimed hourly rate of \$120.00 is excessive, exorbitant and overstated by Mr. Moeller, who has not shown any proper qualifications or experience to have such efforts compensated on any basis he sets forth in his affidavit.

6. Under the provisions of Rule 11(a)(1), Affiant seeks also the striking of said defendants' motions, affidavit, etc., the denial

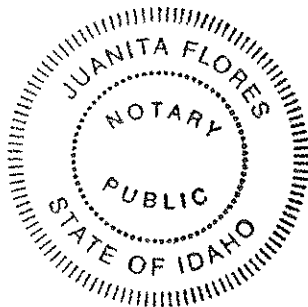
of all requested attorneys fees and/or costs and the imposition of sanctions, both monetarily, in the amount of \$2,500.00, not for attorney fees for affiant, but paralegal fees, expenses and costs related in opposing said motion for attorney fees, and costs which required affiant to research the cited provisions and related case authorities of Rule 54(e) and 12-120 as well as 12-121, the latter although not cited as authority, became relevant to affiant's objections and this affidavit supporting his noticed motions, such paralegal efforts, drafting and finalizing to filing incurring of twenty (20) hours at the rate of \$50.00 an hour for ONE THOUSAND DOLLARS (\$1,000.00.

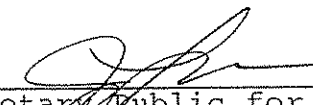
Affiant sayth nothing further at this date and time, except he will further supplement this affidavit prior to date of hearing upon his motions.

DATED: February 23, 2005

  
JOHN N. BACH

SUBSCRIBED AND SWORN To Before me this 23rd day of February, 2005,  
at Driggs, Teton County, Idaho.



  
Notary Public for Idaho  
Residing at Driggs ID  
Comm'n Exp: 2/20/10

INITIAL MEMORANDUM BRIEF IN  
SUPPORT OF PLAINTIFF'S MOTIONS  
& IN OPPOSITION TO DEFENDANTS'  
MOTIONS FOR ATTORNEYS FEES/COSTS

Defendants' motion for attorneys fees and costs is solely cited to be upon the basis of Rule 54(e) and 12-120. Although

54(e) refers to Idaho Code section 12-121, no such citation nor any attempt to analyze section 12-121 as being relied upon nor applicable herein, as is required. For this Court to even assume that's what defendants NICKELL ESTATE has raised and is relying upon would be utter speculation and a grossly without jurisdiction premise. Wherefore, it would be without authority and noncited statute and factual basis/analyze/<sup>not</sup> offered by the defendants, for this Court to enter such inquiry. See Anderson v. Anderson Kaufman, Ringert & Clark, Chartered, 116 Idaho 359, 775 P.2d 2101 (1989); Turner v. Willis, 119 Idaho 1023, 812 P.2d 737 (1991); and Sun Valley Hot Springs Ranch, Inc. v. Kelsey, 131 Idaho 657, 962 P.2d 208 (1999) [Question of an interest in real property necessarily included all appurtenant rights to the property, as well as trespassing and damages upon real property by defendants, etc., were debatable issues and action cannot be considered frivolous nor without foundation and any attorney fees sought were correctly denied].

It is obvious that from the FIRST AMENDED COMPLAINT, defendant NICKELL was sued on a number of viable claims for recovery of both real property, waters rights, shares, damages due to the torts, trespassing, conspiracy with other defendants to injure plaintiff and cause his financial losses. (See especially paragraphs 3, n), 4, 5, [and second numbered] 5, 6, 7, 8 & especially paragraph 9, etc.)

Paragraph 8, stated specifically: "9. Defendant STAN NICKELL joined said defendants in also assisting them in both the summers of 2000, 2001 and 2002, in misappropriating, converting and depriving plaintiff of his ditch and stream irrigation waters and sources, in further, cutting in fall of 2000 plaintiff's fences, driving and causing plaintiff's and other horses he kept for his live-in mate and others to be driven and directed out of plaintiff's sole 40 acres, placed in not only harmful location and condition but for undisclosed persons to steal and appropriate said horses and then abduct them from Teton County, which is a local practice of horse theivery that still exists in Teton County, and then further, dumping dead decomposing steers and calves adjacent to plaintiff's southeast corner of his solely owned 40 acres. Last summer and this summer 2002, NICKELL has

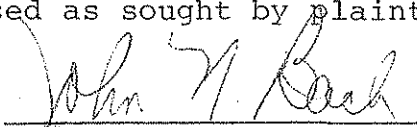
continued such misappropriation of plaintiff's irrigation water, sources and riparian interests, and has further done damage to/of fences and poles, further exposing plaintiff's animals to harm and injury and causing plaintiff additional losses."

Plaintiff's original complaint, per paragraph 6, sought over \$1,000,000.00 special damages, like amount of general damages and punitive damages of \$5,000,000.00, which pled damages were incorporated within the FIRST AMENDED COMPLAINT per paragraph 5, c) along with his testimony and exhibits admitted during the hearing re issuance of Preliminary Injunction, August 13 and 15, 2002. The facts pled of damages exceeded \$25,000.00 and therefore, the provisions of Rule 54(e) have no application to award defendant NICKELL any attorney fees or costs. Nor does any subparagraph of 12-120 have any application nor could it. Defendants NICKELL ESTATE and personal representative, disclaimed any interests in the real properties within Counts One through FOURTH, therefore plaintiff was the prevailing party against NICKELL on said counts. No contract or commercial transaction were involved nor alleged between plaintiff and NICKELL, therefore subparagraphs (1), (2) (3) and (4) of 12-120 have no application at all for any basis of an award of attorneys fees or costs to defendants NICKELL. But most significantly and objected to by plaintiff is that said defendant has cited no specific subparagraph whatsoever under 12-120 upon which said fees and costs are to be based first in point of the particular legal authority. As Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999) rigidly proscribes, since there are various subsections of 12-120, they require different showing and proof, and it is not sufficient that a defendant just make a general claim for attorneys fees based on this section. As further stated in Bingham, where the gravamen does not involve commercial transaction but an issue of title to realty, logs [or



water rights, etc] attorneys fees must be denied. More disingenious of defendant NICKELL's said motion is that, unless all claims asserted are shown to be frivolous and without foundation, such does not equate with nonmeritorious, and where multiple claims it is not appropriate to segregate those claims to determine which were not frivolously pursued. Management Catalysts v. Turbo W. Corpac, Inc. 119 Idaho 626, 809 P.2d 487 (1991) See also Pancoast v. Indian Cove Irrigation District, 121 Idaho 984, 829 P.2d 1333 (1992) (Trial Court may not award attny fees unless amount specifically pleaded is \$25,000 or less even if damages at trial indicates damages of \$25,000 or less); also see Bingham, supra, 133 Idaho 420, page 9, supra.

Defendants NICKELL's attorney by his said affidavit, motion and memo in support thereof, is seeking that this Court intervene for him and do his advocacy and worse, to act where it has no jurisdiction nor any basis of any exercise of discretion. Said defendants and their attorneys seek special favors, preferences and consideration of matters they neither cited nor were issues or the record of this action. Such panderings are not only further evidence of the utter lack of merit, vexatiousness and harassment by defendants and their counsel of plaintiff but of their invitation to this court to join them. See Severson v. Hermann, 116 Idaho 497, 777 P.2d 269 (1989) Said defendants' motion should be stricken, denied in all aspects and sanctions imposed as sought by plaintiff.  
DATED: Feb. 23, 2005

  
JOHN N. BACH, Plt Pro Se

Certificate of Mailing: I the undersigned hereby certify that on this date, Feb. 23, 2005, I did mail copies in separate envelopes with first class mail prepaid affixed thereto, to each of the following: Gregory Moeller, P.O. Box 250 Rexburg, ID 83440; Judge St. Clair, 605 N. Capital Ave. Idaho Falls, ID 83405; Alva Harris, PO. #479, Shelly, ID 83274; Jared Harris, PO #577, Blackfoot, ID. 83221, Jason Scott, P.O. #1617, Boise, ID 83701; Galen Woelk, P.O. Box 533, Driggs, Id 3422; David Shipman, P.O. #51219, Idaho Falls, Id, 83405-1219 and Anntoy Broughton, 1054 Rammell Mtn Rd, Tetonia, ID 83452.

DATED: Feb. 23, 2005